



Final Report
of the
Cuban Claims Program

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Foreign Claims Settlement Commission of the United States



Section II
Completion of the Cuban
Claims Program
Under Title V of the
International Claims
Settlement Act of 1949

Foreign Claims Settlement
Commission of the United States

SUMMARY

On October 16, 1964, the President signed into law, H.R. 12259, which became Public Law 88—666, title V of the International Claims Settlement Act of 1949, as amended (78 Stat. 1110), under which the Commission is authorized to determine the amount and validity of certain claims of nationals of the United States against the Government of Cuba based upon: (1) debts for merchandise furnished or services rendered by nationals of the United States; (2) losses arising since January 1, 1959, as a result of the nationalization or other taking of property belonging to United States nationals; and (3) disability or death of nationals of the United States resulting from actions taken by, or under the authority of the Government of Cuba since January 1, 1959. The full text of the statute appears as Exhibit 11, and the implementing regulations appear as Exhibit 12.

This legislation stemmed, in part, from various actions and enactments in 1959 and 1960 by the Government of Cuba after the Castro regime came into power by which the Government of Cuba effectively seized and took into state ownership most of the property in that country owned by the United States and its nationals, with the exception of the United States Naval Base at Guantanamo Bay. No provision was made by the Cuban Government for the payment of compensation for such property as required under the generally accepted rules of international law.

Subsequently, the Government of the United States terminated relations with the Government of Cuba after all attempts to negotiate failed.

In signing H.R. 12259 into law, the President said:

The basic purpose of this bill is to authorize the Foreign Claims Settlement Commission to determine the amount and validity of claims of United States nationals against the Government of Cuba.

The Castro regime has appropriated over \$1 billion worth of property of United States nationals in total disregard for their rights. These unlawful seizures violated every standard by which the nationals of the free world conduct their affairs.

I am confident that the Cuban people will not always be compelled to suffer under Communist rule - that one day they

will achieve freedom and democracy. I am also confident that it will be possible to settle claims of American nationals whose property has been wrongfully taken from them.

This will provide for the adjudication of these claims of American nationals. I have signed it because of the importance of making such a permanent record while evidence and witnesses are still available." [51 Dept. of State Bull. 674 (1964).]

Title V of the International Claims Settlement Act of 1949, as amended does not provide for the payment of these losses of American nationals in claims against the Government of Cuba. The statute provides only for the determination by the Commission of the validity and amounts of such claims and the certification of the findings to the Secretary of State. The stated purpose of the Congress in directing that the amounts of these losses be certified to the Secretary of State is to provide him with appropriate information which would be useful in future negotiation of a claims settlement agreement with a friendly government in Cuba when diplomatic relations are resumed.

The matter of payment of losses sustained by Americans was considered by the Congress as well as the Executive Branch of our Government when this legislation was examined prior to enactment. Initially, the proposal included a section which would have provided for the liquidation of Cuban assets in the United States and made available the proceeds for payments on the losses determined by the Commission. However, after a study was made by the Treasury Department and the Department of State, upon the direction of the President, it was concluded that Cuban Government assets in the United States were not of sufficient magnitude to warrant such action. Thereafter, this section was deleted from the legislation by the Congress.

Thus, in effect, this program may be classified as a presettlement adjudication of claims to determine the extent of American losses and provide a tool for our Government in dealing with the Government of Cuba in the future on this important international issue.

The program was officially commenced on November 1, 1965 by the issuance of a press release announcing that the filing period had opened and that the deadline for filing such claims was May 1, 1967. Notice of this action was published in the Federal Register pursuant to a statutory requirement. At that time, the Commission mailed claim forms and instructions for filing claims to all persons who had registered an interest in filing such claims with

the Commission as well as the Department of State and other agencies. The instruction sheets and form for filing claims against the Government of Cuba appear as Exhibit 13.

The Cuban Claims Program was the most complex and challenging assignment ever delegated to the Commission, both from a legal and administrative point of view, and it was the most interesting one as well. Over the many years during which Cuba was under the close influence of the United States, Americans were encouraged to and did invest heavily in Cuba's economy. Many of Cuba's industries were developed with American capital and ingenuity, including some of the largest industrial and financial grants in the United States. As a result, Cuba became a progressive industrial country with a great potential for further development.

These conditions changed radically after Fidel Castro came into power on January 1, 1959. By a series of actions taken shortly thereafter, Cuba confiscated, expropriated, intervened, nationalized, and by various means took the properties of American nationals without compensation. Some of the actions were subtle, commencing in one instance with costly and time-consuming requirements, which were clearly deliberate administrative obstacles, that Americans owning mineral and mining rights in Cuba reregister their concessions under conditions that made it almost impossible for anyone to comply. Under Law No. 635 of November 23, 1959, all pending applications for further exploration of American-owned ore concessions were cancelled arbitrarily, and new applications were ignored or disapproved. One such case is illustrated by the *Claim of Felix Heyman*, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.

American exporters of merchandise and other goods to Cuba came under attack upon the enactment of a foreign exchange law by Cuba. This action had the color of legitimacy since foreign exchange is universally recognized as being within the inherent jurisdiction of a sovereign state. However, an examination of the law and its implementation revealed that Cuba had imposed such unreasonable restrictions upon Cuban debtors that they were precluded from making payments to their American suppliers. The Commission concluded that these actions constituted an intervention into the contractual rights of the American suppliers within the meaning of title V of the Act. Two outstanding cases in this respect are the *Claim of Schwarzenbach Huber Company*, Claim No. CU-0109, 25 FCSC Semiann. Rep. 58 (July-Dec. 1966), and the *Claim of Etna Pozzolana Corporation*, Claim No. CU-0049,

1967 FCSC Ann. Rep. 46. In another case, the Commission concluded that the cumulative effect of a number of restrictions by the Cuban Government on the maritime industry constituted a constructive taking of American-owned properties engaged in that industry. (See the *Claim of Garcia & Diaz, Inc.*, Claim No. CU-0940, 1970 FCSC Ann. Rep. 30.)

Since the statute is remedial in nature, it warrants a liberal interpretation in accordance with established rules of construction; and the Commission so construed the statute whenever the circumstances justified such action. Thus, while the statute provided for a filing deadline of May 1, 1967, which could have been extended to May 31, 1967 under certain conditions, the Commission decided that claims filed after the deadline could also be determined on their merits if it did not interfere with the orderly processing of the timely filed claims. That decision was in concert with the legislative intent of the Act that all American claims against Cuba be compiled at a time when evidence and witnesses were still available. Such a complete record would also be of assistance in the event of any future negotiations with Cuba. (See the *Claim of John Korenda*. Claim No. CU-8255. reported herein.)

Similarly, the Commission considered a number of claims involving a section of the statute that required, as a prerequisite for favorable action, that the claims be owned by nationals of the United States continuously from the dates of loss until the dates of filing with the Commission. (See Section 504(a).) A claim was filed on the basis of certain losses with respect to certain Cuban bonds. It was noted by the Commission that the bonds had been owned and traded almost entirely by firms and persons in the United States. Applying a liberal interpretation to that section of the statute, the Commission concluded that the circumstances justified an inference that the bonds and the claims based thereon were so owned continuously by nationals of the United States, and appropriate Certifications of Loss were entered. (See the *Claim of Samuel J. Winkler, et al.*, Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

However, when the circumstances concerned an American corporation which clearly was excluded by the express provisions of the statute, the Commission found no basis for applying a liberal interpretation so as to render the claim valid under the Act. Two claims were filed by an American corporation for certain losses sustained as a result of Cuban Government actions, to which claims the American corporation had succeeded. The statute provided that a corporation is a national of the United States if it

was organized *domestically* and if at least 50% of its outstanding capital stock is owned by nationals of the United States. (See Section 502(1) (B).)

One of the claims arose in favor of an American corporation, but from 1960 to 1962 the claim had been owned by a corporation that was organized in Canada. The second claim arose in favor of this Canadian corporation. Claimant urged that since more than 50% of the outstanding capital stock of the Canadian corporation was owned by nationals of the United States, claimant satisfied the nationality prerequisites of the statute.

The Commission was constrained to reject claimant's contentions. Since the first claim had been owned by a Canadian corporation for two years before the date of filing with the Commission, claimant could not show that the claim was owned continuously by nationals of the United States from the date of loss until the date of filing. The second claim arose in favor of the Canadian corporation (organized under the laws of Canada) and, therefore, was invalid *ab initio* because it was not owned by a national of the United States on the date of loss. The fact that the claimant, which presented the claim, itself qualified as a United States national and that more than 50% of the Canadian corporation's outstanding capital stock was owned by nationals of the United States was insufficient to cure the inherent defects in the claims, and both claims were denied. (See the *Claims of AOFC, Inc.*, Claim Nos. CU-3671 and CU-3672, reported herein.)

As indicated in the decision on these two claims, had the second claim which arose in favor of the Canadian corporation been held by that foreign corporation continuously until the date of filing with the Commission, all American stockholders thereof could have filed claims for their proportionate stock interests therein pursuant to Section 505(b) of the Act. Another leading case in which this latter issue is involved is the *Claim of Ruth Anna Haskew*, Claim No. CU-0849, 1968 FCSC Ann. Rep. 31.

It may be noted at this point that there were a number of less difficult, but nonetheless important, cases that were encountered in the Cuban Claims Program. The following is a summary of some of those cases :

- (a) The Commission held that all properties, goods, chattels, and bank accounts of persons who had left Cuba were taken by virtue of Cuban Law 989 of December 6, 1961. (See the *Claim of Floyd W. Auld*, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 (July-Dec. 1966).)
- (b) The Commission held that claims based on indirect owner-

ship of stock interests in nationalized Cuban corporations through **stock interests in other foreign entities were within the purview of title V of the Act, if at least 25% of the entire ownership interests in the Cuban corporations were vested in United States nationals on the dates of loss.** (See the *Claim of Avon Products, Inc.*, Claim No. CU-0772, 1967 FCSC Ann. Rep. 35.)

(c) **The Government of Cuba enacted Law 963 of August 4, 1961 which annulled all "old currency" and established a new currency. Old currency was required to be turned in at certain designated centers and only limited amounts of the new currency were authorized in exchange therefor. Amounts in excess thereof were deposited in special accounts. Claimant in this case possessed old currency in the United States. The Commission held that the annulment of such old currency outside of Cuba and the failure to provide the right to exchange it for new currency constituted a taking of property within the meaning of title V of the Act.** (See the *Claim of Betty G. Boyle*, Claim No. CU-3473, 1968 FCSC Ann. Rep. 81).

(d) **Based upon a study of the legislative history of title V of the Act, the Commission held that the Government of the United States was not an eligible claimant.** (See the *Claims of the United States of America*, Claim Nos. CU-2522 and CU-2618, 1967 FCSC Ann. Rep. 50.)

(e) **In accordance with the provisions of Section 506 of the Act, the Commission held that amounts received on account of the same loss from whatever source must be deducted in determining the certifiable amount of loss.** (See the *Claim of Richard G. Milk, et. al.*, Claim No. CU-0923, 1967 FCSC Ann. Rep. 63.)

(f) **A question arose in a case concerning taxes which the claimant owed to the Government of Cuba. The Commission applied the theory of set-off and held that such unpaid taxes must be deducted in determining the amount of loss under title V of the Act.** (See the *Claim of Simmons Company*, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.)

(g) **The Commission held that expenses incurred in moving personnel and records from Cuba to another country after an enterprise had been nationalized by Cuba, and expenses of establishing a new office are losses outside the purview of title V of the Act. It was concluded that such losses were too remote and indirect to attribute them to the act of nationalization for the purposes of the statute, and claims for such losses were denied. However, the Commission held in one such case, that the value of improvements made by a lessee to leased premises that were taken by Cuba constituted losses certifiable under the statute.** (See the *Claim of PPG*

Industries, Inc., Claim No. CU-1530, 1970 FCSC Ann. Rep. 51. See also *Claim of Cuban Electric Company*, Claim No. CU-2578, reported herein, and the *Claim of American Brands, Inc.*, Claim No. CU-2354, 1970 FCSC Ann. Rep. 36.) In the *Claim of Frederick Snare Corporation, et. al.*, Claim No. CU-2035, reported herein, the Commission held that improvements to leased premises that were taken by Cuba were allowable losses under title V of the Act if such improvements enhanced the value of the property in question. This was the rationale for allowing the leasehold improvements in the said *Claim of PPG Industries, Inc.*

(h) Another example of indirect losses was presented in a claim for expenses incurred in preparing a claim under title V of the Act. The Commission held that such expenses do not constitute losses within the meaning of the statute. (See the *Claim of Mary Pauline Seal*, Claim No. CU-0059, 1967 FCSC Ann. Rep. 57.)

(i) In one case, claimant asserted that it had made certain guarantees in the event certain conditions ever arose, and designated this portion of the claim as a "provisional claim." The evidence failed to establish that claimant ever became liable under those guarantees or that it sustained any loss in this respect. The Commission held that contingent losses or losses which were never sustained do not form the basis for a valid claim under title V of the Act. (See the *Claim of Ford Motor Company*, Claim No. CU-3072, reported herein.)

(j) The Commission held that the settlement of an attachment suit against a Cuban bank in the New York courts for an amount less than the full amount of the loss in question did not extinguish any claim for the balance of the loss under title V of the Act in the absence of evidence that the stipulation between the parties to the suit included a general release, a covenant not to sue, or a statement that the settlement was agreed upon with prejudice. (See the *Claim of Deak and Co., Inc.*, Claim No. CU-0381, 1968 FCSC Ann. Rep. 27.)

(k) The statute provides for certain claims "arising since January 1, 1959." A study of the legislative history of title V of the Act, however, led to the conclusion that debts owed to American nationals by the Government of Cuba which arose prior to January 1, 1959 are within the purview of the statute if the refusal to pay occurred for the first time after January 1, 1959. (See the *Claim of United Fruit Sugar Company*, Claim No. CU-2776, 1969 FCSC Ann. Rep. 42, and the *Claim of Clemens R. Maise*, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

(l) The Commission held that a trustee under a bond indenture owns no proprietary interest in claims based on the failure

of the Cuban Government to meet its obligations with respect to the bonds. Any losses in these respects were found to have been suffered by the individual bondholders in whose favor Certifications of Loss were entered under title V of the Act. (See the *Claim of Morgan Guaranty and Trust Company of New York, as Trustee*, Claim No. CU-1594, 1967 FCSC Ann. Rep. 44.)

(m) Under the laws of Cuba, children are "obligatory heirs." A case was presented involving American children of a Cuban parent who was alive and owned the claimed property on the date of loss. Counsel for the children, the claimants, urged that claimants owned interests in the property on the date of loss as "obligatory heirs." The Commission, however, held that such rights do not vest until the moment of death. Since it was clear that the claims were not owned by nationals of the United States on the date of loss, the claims were denied. (See the *Claims of Robert M. Gonzalez, et al.*, Claim Nos. CU-3685 and CU-3687, 1971 FCSC Ann. Rep. 82.)

(n) A case involved a life insurance policy issued by an American company doing business in Cuba. The Commission held that the claim was not valid under title V of the Act unless Cuba took the proceeds of the policy. (See the *Claim of Estrella Vaughn, et al.*, Claim No. CU-1213, 1971 FCSC Ann. Rep. 76.)

(o) The Commission held that the failure of the Government of Cuba to honor and transfer benefits due American nationals on account of earned retirement benefits constituted a taking of property within the meaning of title V of the Act. (See the *Claim of A. M. Joy de Pardo*, Claim No. CU-1906, 1969 FCSC Ann. Rep. 71.)

(p) The Commission concluded that in determining the amount of loss sustained under title V of the Act, it is not bound by the amount asserted by claimant, and the Certification of Loss may be in a greater amount than claimed if warranted by the evidence of record. (See the *Claim of King Ranch, Inc.*, Claim No. CU-1507, 1970 FCSC Ann. Rep. 59.)

(q) Although title V of the Act did not expressly provide for the inclusion of interest on the amount allowed, the Commission concluded that interest should be added in a certifiable loss in conformity with principles of international law, justice and equity, and should be computed from the date of loss to the date of any future settlement. (See the *Claim of American Cast Iron Pipe Company*, Claim No. CU-0249, 25 FCSC Semiann. Rep. 49 (July-Dec. 1966.)) Subsequently, the Commission cited another case as authority for this principle as a mere matter of expediency. known

as *Claim of Lisle Corporation*, Claim No. CU-0644, but there was no change in the effect of this holding.

(r) Giving effect to the Community Property Laws of Cuba, which was a recognition of the rule that the law of the situs governs ownership of property, the Commission held that properties in Cuba were owned equally by both spouses (1) if acquired by either one during coverture with funds of the marriage partnership; (2) if acquired by work or industry of either spouse during coverture; or (3) if the fruits, income or interests were received or accrued during coverture from the common or private properties of the spouses. (See the *Claim of Robert L. Cheaney, et al.*, Claim No. CU-0915, reported herein.)

(s) Under the act of state doctrine, the courts of the United States could not generally sit in judgment on the acts of another government committed within its territory. However, that rule was amended by the Hickenlooper Amendment to the Foreign Assistance Act of 1964. Thus, in a claim based on a judgment against the Government of Cuba entered by a Pennsylvania court, the Commission held that the failure of Cuba to satisfy the judgment constituted a loss within the meaning of title V of the Act. (See the *Claim of James Keys*, Claim No. CU-0991, 1968 FCSC Ann. Rep. 75.)

(t) The Commission held that nonstock corporations organized in the United States, the members and trustees of which are citizens of the United States, qualify as nationals of the United States within the meaning of title V of the Act. (See the *Claim of Brothers of the Order of Hermits of St. Augustine (Inc.)*, Claim No. CU-3503, reported herein. This decision followed the holding in the *Claim of Independence Foundation*, Claim No. CU-2152, 1969 FCSC Ann. Rep. 38.)

(u) An American insurance company asserted a claim based, in part, on loans made to Cuban insureds. The evidence showed that the loans were secured by the cash surrender values of the policies, which amounts were in the possession of claimant. In the absence of evidence establishing that claimant had not already been compensated for these asserted losses from the collateral funds in its possession, the Commission held that claimant had not met the burden of proof with respect to this portion of the claim. (See the *Claim of Occidental Insurance Company of North Carolina*, Claim No. CU-2353, reported herein.)

(v) In accordance with the express provisions of Section 505(a) of the Act, the Commission held that a claim based on a debt of an American corporation may not be allowed unless the debt was a charge on property taken by the Government of Cuba.

(See the *Claim of Anaconda American Brass Company*, Claim No. CU--0112, 1967 FCSC Ann. Rep. 60; and the *Claim of Ebasco Industries, Inc.*, Claim No. CU--3548, reported herein.) It should be noted, however that in another case in which the American debtor corporation became defunct after the date of loss, the Commission allowed claims on behalf of such creditors. (See the *Claim of International Telephone and Telegraph Corporation*, Claim No. CU--2615, which is discussed *infra*, and reported herein.)

(w) Cuba nationalized, intervened and otherwise took American properties by means of a number of laws specifically enacted for that purpose. Thus, improved real property was taken pursuant to the Urban Reform Law of October 14, 1960. (See the *Claim of Henry Lewis Slade*, Claim No. CU--0183, 1967 FCSC Ann. Rep. 39.) The Urban Reform Law of October 14, 1960 also effected a cancellation of all mortgages on properties in Cuba, and gave rise to claims on account of such losses. (See the citation to the *Claim of the Estate of Marita Dearing de Lattre, Deceased*, Claim No. CU--0116, in the *Claim of Occidental Insurance Company of North Carolina, supra*, reported herein.)

Private commercial enterprises in Cuba were taken pursuant to Law 1076 of December 5, 1962. (See the *Claim of Perkins Marine Lamp and Hardware Corporation*, Claim No. CU--0323, 1967 FCSC Ann. Rep. 42.)

Pursuant to Law 78 of February 19, 1959, and Law 715 of January 26, 1960, the Government of Cuba directed the confiscation of goods or its proceeds representing what it considered "unjust enrichment." (See the *Claim of United Merchants & Manufacturers, Inc.*, Claim No. CU--0759, 1967 FCSC Ann. Rep. 52.)

Resolution No. 1, issued pursuant to Law 851 of July 6, 1960, authorized the nationalization of Cuban concerns in which Americans owned majority interests. (See the *Claim of American Cast Iron Pipe Company*, Claim No. CU-0249, 25 FCSC Semiann. Rep. 49 (July--Dec. 1966).)

Resolution No. 2, issued pursuant to Law 851 of July 6, 1960, listed certain American banks as nationalized. (See Proposed Decision on the *Claim of First National Bank of Boston*, Claim No. CU--2268, discussed *infra* in connection with an important question of valuation, and reported herein.)

Many other Cuban entities owned or controlled by Americans were listed as nationalized by Resolution No. 3, issued pursuant to Law 851 of July 6, 1960. (See the *Claim of Simmons Company*, Claim No. CU--2303, 1968 FCSC Ann. Rep. 77.)

Law No. 647 of November 25, 1959 authorized the Cuban Minister of Labor to order the intervention of such enterprises as he

deemed necessary, and he was empowered to extend the date of intervention. (See the *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 32.)

A large number of Cuban enterprises were listed as nationalized pursuant to Law 890 of October 13, 1960. (See the *Claim of Kramer, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 (July-Dec. 1966); the *Claim of Bartlett-Collins Company*, Claim No. CU-2192, 1968 FCSC Ann. Rep. 39; and the *Claim of Samuel J. Winkler, et al., id.* at 47.)

Owners of mining concessions in Cuba, as distinguished from oil concessions, lost their properties on various dates by intervention by the Minister of Agriculture pursuant to Law No. 617 of October 7, 1959. (See the *Claim of John El Koury*, Claim No. CU-0384, and the *Claim of Archibald S. Abbey*, Claim No. CU-0352, both discussed *infra* in connection with an important question of valuation, and reported herein.)

Cuba expropriated farms and rural properties pursuant to the Agrarian Reform Law of May 17, 1959, implemented by the regulations of October 7, 1959. (See the *Claim of the Estate of Grenville M. Dodge, Deceased*, Claim No. CU-1290, reported herein.)

(x) The Commission held that the values of life estates and remainder interests in property that was taken by Cuba may be determined on the basis of the Makehamized Mortality Tables as prescribed by the United States Treasury Department regulations governing the collection of gift and estate taxes. (See the *Claim of Richard Franchi Alfaro, et al.*, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.)

The complexity of the Cuban Claims Program and the interest it engendered on the part of all concerned is further illustrated by the following cases :

1. There were instances in which Americans whose properties were taken by Cuba were unable to leave Cuba and, therefore, could not file claims for their losses. On its own motion, the Commission opened claims on behalf of such claimants and left them open until their return to the United States or the end of the program, July 6, 1972. Whenever any such claimant had a member of his family in the United States who had filed a claim, all interests in the properties in question were considered. If the claims of the absent Americans were found to be valid under the statute, appropriate Certifications of Loss were entered in their favor. (See the *Claim of Placido Navas Costa, et al.*, Claim No. CU-3344, reported herein.) In those instances in which it could not be determined whether the claims of such absent Americans

were valid under the Act due to the lack of evidence, the claims were held open as long as possible and were dismissed at the statutory end of the program.

2. A very complex case involved several American and Cuban entities, as well as individuals, who owned direct or indirect interests in the entities. There were conflicting claims concerning ownership of certain large quantities of sugar that had been taken by the Government of Cuba. These claims were supported by a brief submitted by counsel for claimants who suggested findings of ownership in the alternative and agreed to any decision the Commission would reach in this respect. A second important issue in this case centered around ownership of certain stock interests by two non-United States nationals who were two of four beneficiaries under an irrevocable trust. Here, counsel urged that the trustees, nationals of the United States, owned the stock interests and that these two non-United States nationals never owned either a legal or equitable interest in the stock. Upon careful consideration of the evidence of record, the Commission held that the trustees were merely nominal holders, and that the beneficiaries were the real parties in interest who must satisfy the United States nationality prerequisites of the statute. (See the *Claim of Efim Golodetz, et al.*, Claim Nos. CU-1816, CU-1818, CU-1819 and CU-1820, reported herein.)

3. The statute provides that a claim based on an interest in an entity which qualifies as a national of the United States shall not be considered because the entity itself is the proper party claimant. (See Section 505(a) of the Act.) However, in an unusual set of circumstances the Commission held that covered losses of an American corporation which became defunct after the dates of loss may be the basis for certifying such losses in favor of a majority stockholder of the defunct entity as trustee for the benefit of non-claimant stockholders and creditors. The Commission further held that the distribution is to be made in accordance with the laws of Delaware, where the defunct corporation had been organized, and with the provisions of title V of the Act, preference to be given to creditors, preferred stockholders and common stockholders in that order, and the qualifications as to nationality to be observed. Further, it was held that the distribution is to be made on the same pro rata basis as employed in determining any payment made to successful claimants against the Government of Cuba. (See the *Claim of International Telephone and Telegraph Corporation, Individually and as Trustee*, Claim No. CU-2615, reported herein.)

4. A claim was presented by an American insurance company

doing business in Cuba. One of its Cuban insureds suffered a covered loss in Cuba, and before he could recover from claimant, the Government of Cuba confiscated the Cuban's properties, including his claim against claimant. When claimant failed to pay Cuba for the insured's loss to which Cuba asserted title, Cuba confiscated assets of claimant on deposit in Cuba. In the meantime, the Cuban insured, who had fled to the United States, instituted suit against claimant in an American court. Claimant alleged in that suit that its liability to the insured had been satisfied when Cuba, as successor in interest, seized sufficient assets of claimant to pay the insured loss.

Initially, the Cuban's suit was dismissed, and appealed ultimately to the United States Supreme Court. Subsequently, the suit was remanded to the United States Court of Appeals and, in turn, to the United States District Court. Finally, the court ruled in favor of the Cuban on the ground that the suit was transitory in nature and that acts of Cuba expropriating the insured's properties could not be given extraterritorial effect. The court, therefore, held that Cuba had not taken the insured's claim against claimant, but only claimant's properties. The Commission found accordingly. (See the *Claim of Aetna Insurance Company*, Claim No. CU-2363, reported herein.)

5. The Commission held that the value of the life of an American who had been executed by a Cuban firing squad in violation of international law is measured by the contributions the deceased would have made to his dependents. (See the *Claim of Jennie M. Fuller, et al.*, Claim No. CU-2803, reported herein.)

This determination as to the value of human life is to be distinguished from the Commission's holding in a case under the General War Claims Program authorized by the War Claims Act of 1948. Based upon a different legislative intent than that in the International Claims Settlement Act of 1949, the Commission held that the value of a human life should not be measured by age, status in life, ability to earn, or dependents; and that each life should be considered equal under the statute. Accordingly, the Commission initially fixed the award for a death claim at \$10,000.00 based upon allowances under other Federal statutes. Subsequently, upon reconsideration, the Commission allowed \$25,000.00 for the loss of each life. (See *Claim of Edward T. Wilkes, et al.*, Claim Nos. W-10922, W-10923, W-10924, 23 FCSC Semiann. Rep. 77 (July-Dec. 1965) .)

6. A very interesting case concerned a contract to build a low cost housing project in Cuba. As a result of certain negotiations with officials in Cuba, claimant, a corporation, was organized in

Delaware, and ultimately this entity entered into a contract with the Government of Cuba to build a \$10 million housing development. One day later, claimant entered into a subcontract with a Cuban corporation that was wholly owned by one of the stockholders of claimant, pursuant to which the Cuban entity agreed to build the housing project for \$8.5 million. A week later, the same stockholders of claimant formed a Cuban corporation, and claimant assigned its original contract to the newly formed Cuban corporation. The Cuban subcontractor commenced work late in December 1958, and in January 1959, after Castro came into power, construction was halted and no work was performed thereafter, which actions constituted a taking of property within the meaning of title V of the Act. Claimant requested \$1.5 million as the profit it would have earned had there been no interference from Cuba.

The Commission noted that the contract and the subcontract included "cost plus" provisions not to exceed \$10 million and \$8.5 million, respectively. There was no evidence to establish what the final costs would aggregate. The Commission, therefore, concluded that any finding that an amount certain would be earned as profit was purely speculative and without foundation. Accordingly, the claims were denied. (See the *Claims of Berlanti Construction Company, Inc., et al.*, Claim Nos. CU-0871 and CU-0657, reported herein.) On the other hand, the losses actually sustained by the subcontractor for supplies and other related costs in commencing work under the subcontract were found to be allowable under the Act on the basis of a 100% stock interest in the subcontractor by an American national. (See the *Claim of Angel Pagliuca*, Claim No. CU-0632, reported herein.)

The Pagliuca case also illustrates how the Commission evaluated items of personal property. Generally, such items were depreciated to arrive at their values on the dates of loss. Depreciation rates were, usually, those applied by the Internal Revenue Service in the collection of income taxes.

7. A claim was presented by a claimant who asserted the loss of certain properties and personal injuries as a result of actions by the Cuban Government. It appeared from the record that claimant had been convicted of counter-revolutionary activities and imprisoned. The sentence also included the confiscation of all her properties in Cuba. Since the evidence failed to establish that claimant had been denied due process of law or that there was a denial of justice as that term is understood under international law, the Commission found no basis for allowing the claim for property losses. The Commission held that a state has the inherent

sovereign right to impose penalties for the violations of its laws. With respect to the claim for personal injuries, the evidence failed to establish that claimant's personal injuries or disability resulted from action by the Cuban Government in violation of international law. Accordingly, the claim was denied in its entirety. (See the *Claim of Isabella Shamma*, Claim No. CU-2593, reported herein.)

8. A case involved a contract between a Cuban corporation and an American entity. Pursuant to the agreement, the American entity shipped certain machinery to the Cuban entity for use in manufacturing certain products. The contract provided that the machinery was to remain the property of the American entity until paid for by the Cuban entity. In addition, the Cuban entity agreed to pay the American entity certain royalties based upon the amount of products manufactured by the machines. Since the record showed that the Government of Cuba had purchased the machines from the Cuban entity, the Commission held that Cuba had assumed the obligations of the Cuban entity under the contract. (See the *Claim of Pilgrim Plastics Corporation*, Claim No. CU-1979, reported herein. See also the *Claim of Jantzen, Inc.*, Claim No. CU-1531, 1968 FCSC Ann. Rep. 66; and the *Claim of Schiaparelli, Inc.*, Claim No. CU-2112, 1970 FCSC Ann. Rep. 55.)

9. Some of the cases were complicated because they involved interests in many Cuban corporations and other items of property. The values of each stock interest and each item of property had to be determined separately at the expense of much time, effort and research. Moreover, it was necessary to find a date of loss with respect to each such stock interest or other item of property. (See the *Claim of William A. Powe*, Claim No. CU-0502, reported herein.)

10. Many claims involved the issue of valuation which proved to be a most difficult one to resolve. The statute provides that the Commission shall consider "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." (See Section 503 (a) of the Act.) Several cases have been selected to illustrate that this issue was resolved by determining each such case on its own merits and thereby applying the valuation "most appropriate" and "most equitable."

(A) Where warranted, the Commission held that the value of a Cuban corporation may be determined by considering its book value and adjusting the values of its assets on the basis of competent appraisals. In this case, the Cuban corporation owned sugar cane plantations and refineries which were the subjects of the ap-

praisals. (See the *Claim of Ruth Anna Haskew*, Claim No. CU-0849, 1968 FCSC Ann. Rep. 31.)

(B) In a claim based on a mining concession, it appeared that the mines in question were never operated because it was not considered commercially profitable to do so. Claimant contended that the concessions were valuable and that in the future there may be improved processes and conditions that would allow the mines to be exploited for commercial purposes. The Commission held that the values of the concessions must be determined on the basis of conditions existing as of the date of loss, and not on the basis of conditions that may arise in the future. Since the evidence failed to show that the concessions had any measurable value on the date of loss, the claim was denied. (See the *Claim of Freeport Sulphur Company*, Claim No. CU-2625, reported herein.)

(C) The values of mining concessions were issues in a number of claims. In one case, it appeared that the concessions were commercially exploitable, but the evidence was insufficient to support claimant's assertions as to their values. The record showed that some assays had been taken which indicated good values for some of the samples. The principal mining concession was under lease to a Cuban corporation providing for a 10% gross royalty. The Commission concluded that the evidence justified some finding of value because the property had a commercial worth in the market place. On the basis of the entire record and by the application of sound reasoning, the Commission entered an appropriate Certification of Loss in favor of claimant. (See the *Claim of John El Koury*, Claim No. CU-0384, reported herein.)

Difficulties concerning valuation were also encountered in another case involving mining concessions. These difficulties and the lack of evidence in other respects led to a denial of the claim originally. Upon appeal, sufficient evidence was submitted to justify a favorable decision. The record included copies of documents submitted to the Internal Revenue Service and a deposition from a mining engineer who had personal knowledge of the facts. Based upon this record, the Commission determined the value of the ores in the mines as of the date of loss by applying appropriate annual discount rates. (See the *Claim of Archibald S. Abbey*, Claim No. CU-0352, reported herein.)

The two above cases should be distinguished from two other instances in which the evidence established substantial ore reserves by clear and convincing proof. In one of these cases, it was shown that the concessions in question contained proven ore re-

serves of nickel and cobalt that would take 22 years to exhaust based upon the production capacity of the plant and equipment. The Commission determined the values of the ores and the liquidated future values of the plant and equipment by the application of appropriate annual discount rates. In effect, the plant and equipment were depreciated to find their value after 22 years of operation and that amount was subjected to a discount rate to find the value on the date of loss. (See the *Claim of Moa Bay Mining Company, et al.*, Claim Nos. CU-2619 and CU-2573, reported herein.)

The other case involved claims for the loss of mining concessions containing proven reserves of ore, probable reserves and possible reserves. Originally in its Proposed Decision, the Commission denied the portions of the claims for probable and possible ores, citing the *Moa Bay Mining Company* case, *supra*, in which only proven or measured ores were involved.

Claimant appealed and submitted additional supporting evidence, including a report from a firm of mining, geological and metallurgical consultants. It further appeared that actual experience in exploiting the concessions showed that much of what was considered probable ore was found to be proven, and that much of what was considered possible was found to be probable. Considering the entire record, the Commission concluded that the values of the proven ore, the probable ore, and the possible ore should be determined by the application of annual discount rates of 8%, 12%, and 15%, respectively. (See the *Claim of Nicaro Nickel Company*, Claim No. CU-2624, reported herein.)

(D) In a claim involving Cuban branches of an American bank, the Commission concluded that the application of the book value method would be inequitable to the claimant. On the basis of the evidence of record, the Commission held that the fair market value of the branches was the proper method of evaluation. Using the market price of the American bank's stock at the time of loss, the Commission allotted to the branches the portion of that market value of the entire enterprise, including all domestic and foreign operations, which the net income of the branches bore to the net income of the whole. Initially, the Commission found that the book value of the branches was most appropriate and issued its Proposed Decision on that basis. New evidence submitted thereafter was found to warrant the use of the fair market value. (See the *Claim of The First National Bank of Boston*, Claim No. CU-2268, reported herein.)

(E) However, in another case of Cuban branches of an American bank, the Commission applied a different method of

valuation, primarily because evidence as to the market value and percentages of profit were not of record, unlike the *Claim of The First National Bank of Boston*. In this case, the Commission considered several methods of valuation suggested by claimant. It was clear that the book value method would be inequitable since the record included appraisals indicating that some of the properties in question had greater values than shown by the books. The Commission concluded that the most appropriate and equitable method was the result obtained by capitalizing the branches' average annual net earnings at 10%. (See the *Claim of the First National City Bank*, Claim No. CU-2628, reported herein.)

(F) The value of a Cuban corporation which operated a very large hotel in Cuba was also determined by capitalizing its average annual net earnings at 10%. However, this amount was augmented by the value of certain improvements the Cuban corporation had made shortly before intervention by the Government of Cuba, which method the Commission found most appropriate and equitable under the circumstances. (See the *Claim of Intercontinental Hotels Corporation*, Claim No. CU-2521, reported herein.)

(G) As indicated above, the Commission had concluded in a number of cases that the most appropriate and equitable basis for evaluating certain Cuban enterprises was capitalizing their average annual net earnings at 10%, or applying a multiple of 10 to such earnings. In some instances where justified, these resulting amounts representing the "going concern" values, were augmented by the values of any liquid assets, such as cash and the excess of current accounts receivable over current accounts payable.

That method of augmenting the "going concern" values of two Cuban enterprises was applied in a particular case, and an appropriate Certification of Loss was entered. The claimant appealed, and at the oral hearing before the Commission it offered in evidence the testimony of one of its officers who had personal knowledge of the facts; of an expert who had prepared a valuation report already of record; and of an economist who had conducted an independent study of a number of American entities including claimant.

The evidence indicated that as a result of a vigorous sales campaign in Cuba, the two Cuban enterprises were showing a high growth potential substantiated by progressively increasing net earnings. It further appeared that the net earnings leveled off in 1959. Accordingly, the Commission held that the average annual net earnings of the two Cuban enterprises were represented by their net earnings in 1959. Considering the unusual rate at which these net earnings were rising, the Commission held that the most

appropriate and equitable valuation in this case was the result obtained from applying a multiple of 15 to such net earnings. (See the *Claim of Colgate-Palmolive Company*, Claim No. CU-0730, reported herein. It should be noted that an inadvertent error had been made in the Proposed Decision on this claim, which was corrected in the Final Decision which is also included herein.)

(H) The Commission held that the value of a nationalized Cuban corporation may be determined on the basis of its balance sheet as of a date closest to the date of loss for the purposes of title V of the Act. However, items in such a balance sheet, such as good will and organization expenses, were not allowed as assets unless they enhanced the value of the Cuban enterprise, or unless Cuba benefited therefrom by continuing the business after taking it. (See the *Claim of Bartlett-Collins Company*, Claim No. CU-2192, 1968 FCSC Ann. Rep. 39, and the *Claim of Libby Holman Reynolds*, Claim No. CU-1384, 1969 FCSC Ann. Rep. 24. See also the *Claim of William A. Powe*, Claim No. CU-0502, reported herein, in which organization expense was included as an asset by claimant in each of two of the several Cuban corporations in question. In one instance, \$1,907.90 was shown for such expenses upon the formation of the Cuban entity in 1945, and in the other instance, it appeared in the amount of \$6,618.51 upon the formation of that Cuban entity in 1951. Considering the fact that both Cuban entities had been nationalized in October 1960, the Commission held that such items should have been written off completely prior to the date of loss, and disregarded these items as assets in determining the values of the Cuban entities.)

(I) Items in a balance sheet, such as intangibles and licenses, were held not allowable as assets in the absence of evidence establishing the nature thereof and the fact that the items had values on the date of loss. (See the *Claim of Union Light and Power Company of Cuba*, Claim No. CU-0330, reported herein.)

(J) In another case, the Commission held that items appearing in a balance sheet as liabilities may be shown by competent evidence not to be, in fact, liabilities and therefore not deductible in arriving at the net worth of a corporation that was nationalized by Cuba. (See the *Claim of International Harvester Company*, Claim Nos. CU-2458 and CU-2459, 1970 FCSC Ann. Rep. 71.)

(K) The Commission held that the value an insurance company's good will may, where circumstances warrant, be determined by applying a multiple of 2 to the average annual gross income from commissions for the five-year period immediately preceding the year in which the loss occurred, for the purpose of

title V of the Act. (See the *Claim of Johnson & Higgins*, Claim No. CU-0769, 1971 FCSC Ann. Rep. 40.)

(L) In another claim of an American insurance company, a question arose concerning the value of claimant's equity in its issued Cuban insurance policies on October 24, 1960 when the Government of Cuba seized all of claimant's properties and prevented it from continuing its business. On the basis of competent evidence, including a detailed analysis of claimant's Cuban operations, the Commission found claimant's gross equity in the policies, and its net equity on the date of loss by the application of appropriate discount rates. (See the *Claim of Pan-American Life Insurance Company*, Claim No. CU-3651, reported herein.)

(M) The Commission held that evidence indicating the values of claimant's stock interests in nationalized Cuban corporations as of dates too far removed from the dates of loss provides an insufficient basis to justify an allowance under title V of the Act. (See the *Claims of Warren and Arthur Smadbeck, Inc., et al.*, Claim No. CU-2465, reported herein.)

(N) A claim was presented involving the value of an enterprise manufacturing and selling a soft drink that was made from a secret formula, which enterprise produced substantial profits in the Cuban market. The Commission originally allowed a minimal amount on account of the intangible asset represented by the use of that formula. Upon the submission of further evidence, the Commission held that this intangible asset may be evaluated by capitalizing the enterprise's average annual net earnings. (See the *Claim of Coca-Cola Company*, Claim No. CU-1743, reported herein.)

(O) A claim was presented involving heavy machinery, barges, a dredge, and related pile-driving equipment, supplies and accessories. Claimants asserted losses based upon the costs of replacing their properties with new ones. In rejecting this method of valuation, the Commission held that the statutory term "cost of replacement" means replacement in kind, taking into consideration the age and condition of the properties on the date of loss; and that it does not mean replacing the properties with new ones. (See the *Claim of M & M Dredging & Construction Co., et al.*, Claim No. CU-0219, reported herein.)

(P) In a case in which the loss of rare paintings was asserted, the Commission was constrained to reject certain appraisals submitted by claimant. Upon consideration of the entire record, the Commission held that the valuation most appropriate to the property and equitable to the claimant was the appraisal of an official art curator for the French Government who had selected

the paintings for purchase by claimant's father, her predecessor in interest. (See the *Claim of Olga Lengyel*, Claim No. CU-3669, reported herein.)

(Q) The Commission held that the nationalization of a wholly owned Cuban subsidiary of an American corporation did not justify a Certification of Loss because the Cuban entity was insolvent on the date of loss. (See the *Claim of the Goodyear Tire & Rubber Company*, Claim No. CU-0887, reported herein.)

(R) The Commission held that the value of films and film products may be best determined by considering the costs of manufacturing and shipment, as well as depreciation incident to shipment, exhibition and storage of the properties in Cuba. (See the *Claim of Twentieth Century-Fox Film Corporation*, Claim No. CU-2114, reported herein.)

(S) The Commission took administrative notice that land and improved real property values increased substantially in value between 1954 and 1959 when Castro came into power. Appropriate Certifications of Loss were entered on this basis. (See the *Claim of Mac Gache*, Claim No. CU-0050, reported herein.)

11. The Commission's regulations provide that after the entry of a final decision a claim may be reopened upon the timely submission of newly discovered evidence which warrants a change in that final decision. (See Section 531.5 (1) .) There were a number of instances in which petitions to reopen were granted. Generally, in the cases that were allowed, the amounts previously granted were increased, or a claim that had been denied in whole or in part was allowed. on the basis of the newly discovered evidence. These regulations further provide that no such petition shall be entertained unless it appears that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of entry of the final decision, that it was not for want of due diligence that such evidence was not discovered sooner, that the evidence is material, and that reconsideration of the matter on the basis of such evidence would produce a different decision.

Several of these cases have been selected as examples of how such matters were handled, and they are reported herein as follows:

(a) *Claim of Sperry Rand Corporation*, Claim No. CU-0278. This claim was based on the nationalization of claimant's wholly owned Cuban subsidiary. The evidence showed that the subsidiary had been nationalized on October 24, 1960. The record included a certified balance sheet for the subsidiary for the year ending March 31, 1960, prepared by an independent firm of accountants.

According to that balance sheet, the subsidiary was insolvent. Another balance sheet of record, although uncertified, showed that as of September 30, 1960, the net deficit of the subsidiary had increased. On the basis of the precedent in the *Claim of Goodyear Tire & Rubber Company, supra*, reported herein, the claim was denied.

The new evidence consisted of a valuation report for the subsidiary as of November 17, 1960, and supporting schedules prepared by claimant's chief executive officer on the basis of an examination of the subsidiary's books and records. Upon consideration of the entire record in light of the newly discovered evidence, the Commission found that the actual values of the subsidiary's assets had been understated in the said balance sheets, and that the net worth of the subsidiary on the date of loss was substantial. An appropriate Certification of Loss was therefore entered. The Amended Final Decision and the original Proposed Decision, which was affirmed as the Commission's Final Decision, are reported herein.

(b) *Claims of Harry Schrage, et al.*, Claim Nos. CU-1433 and CU-1434. Originally, these claims were denied for lack of proof. Subsequently, upon appeal and the submission of some supporting evidence, the claims were allowed in part. Portions of the claims were denied in the Final Decision on the ground that claims for certain inherited stock interests had not been established as having been owned by nationals of the United States continuously from the dates of loss to the date of filing with the Commission.

The newly discovered evidence established compliance with the nationality prerequisites of the statute. Since neither the values of the Cuban corporations in question, nor the debts owed by these entities to the claimants, which were already of record, had not been challenged, the Commission amended the Final Decision by the addition of new party claimants, the heirs, and by entering Certifications of Loss on the basis of their established interests in the claims.

(c) *Claim of Carter H. Ogden, et al.*, Claim No. CU-2339. This claim also was denied in its entirety for lack of proof. It had been filed by Carter H. Ogden alone. Subsequently, he submitted competent evidence establishing losses certifiable under the statute. However, the evidence also showed that his first wife had acquired one-half interests in the properties in question under the Community Property Laws of Cuba. (See *Claim of Robert L. Cheaney, et al., supra*, reported herein.) Accordingly, the Commission entered a Final Decision certifying equal losses in favor of Carter H. Ogden and his first wife.

The newly discovered evidence established that Carter H. Ogden was divorced from his first wife in 1957, and that by a settlement agreement that was approved by a Cuban court of competent jurisdiction his first wife waived her community property rights in consideration of a lump sum payment and a monthly alimony for the rest of her life. Claimant also attempted to have his second wife, whom he married in 1960, be recognized as part owner of the claim. Applying the laws of Cuba, the Commission found that neither the first nor the second wife owned any interests in the properties. The Commission therefore entered a Certification of Loss for the full amount in favor of Carter H. Ogden.

(d) *Claim of Maria Vinas*, Claim No. CU-3216. Originally, this claim was allowed in part, one portion thereof having been denied for lack of proof, and a third portion having been allowed on the basis of a 1/10 interest therein. These findings were made in the Proposed Decision which was entered as the Commission's Final Decision on this claim.

The newly discovered evidence consisted of evidence obtained from abroad; and it established that the portion of the claim that had been denied should now be allowed. It further appeared from the new evidence that claimant was the sole owner of the property in which the Commission had found a 1/10 interest. An appropriate Certification of Loss in favor of claimant was entered.

(e) *Claim of Frank Steinhart, Jr., et al.*, Claim No. CU-0231. This claim had been filed by Frank Steinhart, Jr. on his own behalf based on certain purchased and inherited properties. A Certification of Loss in his favor was entered by the Commission in its Final Decision.

The petition to reopen requested that claimant's sister, a national of the United States at all pertinent times, be permitted to join the claim for her inherited interests in some of the properties in question. It was also requested that she be allowed to claim other items of property in which her brother owned no interests. These requests were supported by competent evidence. The Commission granted the petition and entered appropriate Certifications of Loss in favor of both claimants. Here again, is an example of the Commission exercising its discretion in order to compile as complete a record as possible of all claims of nationals of the United States against the Government of Cuba.

(f) *Claim of Sweet Paper Sales Corporation*, Claim No. CU-1874. This claim was denied originally in its entirety for lack of proof. The principal reason for denial was the failure of proof establishing that claimant qualified as a national of the United States within the meaning of title V of the Act.

The newly discovered evidence showed that claimant satisfied the nationality prerequisites of the statute. It further appeared from the new evidence that claimant owned a controlling stock interest in a Cuban corporation that was nationalized on October 24, 1960. The evidence was also sufficient to establish an equitable value for claimant's stock interest on the date of loss, and a Certification of Loss was entered in favor of claimant by an Amended Final Decision.

(g) *Claim of Frederic Samuels, Claim No. CU-0263.* Originally this claim was allowed in part, and a portion thereof based on a stock interest in a nationalized Cuban corporation was denied, because it appeared from the record that all stockholders of the corporation, including this claimant, had recovered amounts on account of this loss which exceeded the apparent net worth of the corporation. (See Section 506 of the Act.)

In a related claim by another stockholder of that Cuban corporation, the evidence established that the corporation owned an asset, good will, which was not recorded on its books and records and was, therefore, not considered in determining the value of this claimant's stock interest. The Commission found a greater value per share of stock in that related claim than it found in the *Claim of Frederic Samuels*.

Accordingly, the Commission reopened this claim on its own motion and increased the Certification of Loss in favor of Frederic Samuels appropriately.

(h) *Claim of Howard E. Holtzman, et al., Claim No. CU-2168.* This is another instance in which the Commission reopened a claim on its own motion, but there is an important distinction between the two cases.

The record shows that claimants owned stock interests in a Cuban corporation which had leased certain mines in Cuba from another Cuban entity. The taking of the mines by Cuba gave rise to a claim under title V of the Act. Pursuant to the lease, which ran for one year and was renewable from year to year for a maximum of 30 years, the lessee was required to pay the lessor a royalty of 10% of the sales price for each long ton (2,240 pounds) mined, less certain expenses, and a minimum royalty was also included. Since the evidence indicated that all royalties had been paid by the lessee, the Commission determined the value of the lessee corporation's losses by reducing the value of its assets by its liabilities on the date of loss, and no deduction was made for any royalty due the lessor. On this basis, the Commission entered Certifications of Loss in favor of the claimants in accordance with their proportionate stock interests in the lessee.

The newly discovered evidence was found in another case which was determined long after the Final Decision was entered on the *Holtzman* claim. The case in point is the *Claim of Matthew A. Fryer*, Claim No. CU-1617 reported herein. In the *Fryer* case, it was first disclosed to the Commission that Mr. Fryer was the sole owner of the Cuban corporation which had leased the mines to the lessee in the *Holtzman* case.

Mr. Fryer claimed, inter alia, a loss of \$35,000.00 for unpaid royalties due from the lessee. Upon examination of the *Holtzman* file, which was already closed, in light of the evidence then of record in the *Fryer* case, the Commission concluded that all royalties due from the lessee had been paid. Accordingly, this portion of the *Fryer* claim was denied initially.

At an oral hearing before the Commission, new documentary evidence was introduced, including testimony from Mr. Fryer and a mining engineer who had personal knowledge of the facts. It then appeared that said royalties of \$35,000.00 had not been paid by the lessee. In order to extend to the claimants in the *Holtzman* case due process of law, the Commission set aside the Final Decision in that claim, issued an Amended Proposed Decision by which it proposed to reduce the amount of losses found in the *Holtzman* case by \$35,000.00, and fully advised these claimants by letter of their rights to submit evidence supporting their claim in this respect. When no objections or evidence was filed by these claimants within the allotted period of time, the Commission allowed the royalty claim in the *Fryer* case and reduced the Certifications of Loss in the *Holtzman* case.

(i) *Claim of Matthew A. Fryer*, Claim No. CU-1617. In entering a Final Decision on this claim, the Commission allowed a portion thereof based on unpaid royalties, as already noted above, in the *Holtzman* case. Another portion of the claim was based on a mining concession with respect to the Antonio Mine in Cuba which Mr. Fryer had leased to a Cuban corporation. Here again, claim was made for royalties due from this lessee. It may be noted that no claim was filed by any stockholder of this Cuban lessee corporation because apparently none was a national of the United States. The portion of the claim for said royalties was denied for lack of proof.

The newly discovered evidence consisted of certain contemporary correspondence and affidavits from individuals with personal knowledge of the facts. Based on said evidence and the record already on file, the Commission determined the amount of ore in the mine, the length of time it would take to exhaust the ores therein, and the value of claimant's equity in the concession

on the date of loss by the application of an appropriate discount rate. The Proposed Decision, the Final Decision, and the Amended Final Decision issued upon reopening are published herein.

(j) *Claim of Intercontinental Hotels Corporation, Claim No. CU-2521.* This is another case in which the Commission reopened the claim on its own motion. Here, the Commission determined the value of claimant's stock interest in a nationalized Cuban corporation. Subsequently, the Commission had occasion to consider another claim in which a stock interest in the same Cuban entity was involved. Initially, the value of the stock of the Cuban entity was found to be the same in both claims. However, convincing evidence submitted in support of objections in the other related case resulted in a stock valuation greater than originally found. Accordingly, the Commission reopened this claim and increased the Certification of Loss appropriately. The Amended Final Decision by which this was accomplished may be found herein following the initial decision on this claim.

Exhibit 15 of this report includes final statistics with respect to the Cuban Claims Program ; a breakdown of the allowances made according to amounts and whether the awardees were corporations or individuals ; and a list of the ten largest Certifications of Loss.

EXHIBIT 11

TITLE V OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949¹

PURPOSE OF TITLE

SEC. 501.² It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba, or the Chinese Communist regime,' which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,' out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba or the Chinese Communist regime,' in order to obtain information concerning the total amount of such claims against the Government of Cuba, or the Chinese Communist regime,' on behalf of nationals of the United States. This title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

DEFINITIONS

SEC. 502. For the purposes of this title:

(1) The term "national of the United States," means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba or the Chinese Communist regime or by enterprises which have been nationalized,

¹ Title V was added by Public Law 88-666 (78 Stat. 1110), approved October 16, 1964. Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, amended Title V to provide for the determination of the amounts of claims of nationals of the United States against the Chinese Communist regime.

² This section was amended by sec. 1 of Public Law 89-262 (79 Stat. 988), approved October 19, 1955, by striking out "which have arisen out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the data on which such merchandise was furnished or services were rendered or".

³ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

⁴ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959".

⁵ This section was amended by sec. 1 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime" and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.⁷

(4) The term "Government of Cuba" includes the government of any political subdivision, agency, or instrumentality thereof.

(5) The term "Chinese Communist regime" means the so-called Peoples Republic of China, including any political subdivision, agency, or instrumentality thereof.¹⁰

RECEIPT OF CLAIMS

SEC. 503. (a) "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, or the Chinese Communist regime,¹¹ arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,¹² 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, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime," or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized,¹³ under this title, whichever date is later. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account

⁷ Ibid.

⁸ Ibid.

¹⁰ This paragraph was added by sec. 2 of Public Law 89-790 (80 Stat. 1365), approved November 6, 1966.

¹¹ This section was amended by sec. 2 of Public Law 89-262 (79 Stat. 988), approved October 19, 1965, by striking out "arising out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or".

¹² This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

¹³ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

¹⁴ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime," after "within sixty days after the enactment of this title".

¹⁵ This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365), approved November 6, 1966, by inserting "with respect to each respective claims program authorized," after "carrying out its functions".

the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement.

(b) 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, or the Chinese Communist regime,¹⁶ arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese regime,¹⁷ for disability or death resulting from actions taken by or under the authority of the Government of Cuba, or the Chinese Communist regime,¹⁸ if such claims are submitted to the Commission within the period established by the Commission under subsection (a), or within six months after the date the claims first arose (as determined by the Commission), whichever date last occurs.

OWNERSHIP OF CLAIMS

SEC. 504. (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

(b) A claim for disability under section 503(b) may be considered if it is filed by the disabled person or by his successors in interest; and a claim for death under section 503(b) may be considered if filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damage sustained on account of such death. A claim shall not be considered under this section unless the disabled or deceased person was a national of the United States at the time of injury or death and if considered, shall be considered only to the extent the claim has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

CORPORATE CLAIMS

SEC. 505. (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a

¹⁶ This section was amended by sec. 3 of Public Law 89—780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

¹⁷ This section was amended by sec. 3 of Public Law 89—780 (80 Stat. 1365), approved November 6, 1966, by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

¹⁸ This section was amended by sec. 3 of Public Law 89—780 (80 Stat. 1365), approved November 6, 1966, by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.¹

(b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

SEC. 506.²⁰ In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

ACTION OF COMMISSION WITH RESPECT TO CLAIMS

SEC. 507. (a) The Commission shall certify to each individual who has filed a claim under this title the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

TRANSFER OF RECORDS

SEC. 508. The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

¹⁹ This sentence was added by sec. 3 of Public Law 89—262 (79 Stat. 988), approved October 19, 1965. The sentence was amended by sec. 4 of Public Law 89—780 (80 Stat. 1365), approved November 6, 1966, by adding to the end thereof a comma and the following: "or the Chinese Communist regime."

²⁰ This section was amended by sec. 4 of Public Law 89—262 (79 Stat. 988), approved October 19, 1965, by striking out: "Provided, That the deduction of such amounts shall not be construed as divesting the United States of any rights against the Government of Cuba for the amounts so deducted".

APPLICATION OF OTHER LAWS

SEC. 509. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsection (f) of section 7.

SETTLEMENT PERIOD

SEC. 510. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 503(a) of this title or following enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized under this title, whichever date is later.

APPROPRIATIONS

SEC. 511.²² There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administrative expenses incurred in carrying out its functions under this title.

FEES FOR SERVICES

SEC. 512. No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of so much of the total amount of such claim, as determined under this title, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

SEPARABILITY

SEC. 513. If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the remainder of the Act, or the application of such provision to other persons or circumstances, shall not be affected.

²¹ This section was amended by sec. 5 of Public Law 89—780 (80 Stat. 13651, approved November 6, 1966, by inserting "with respect to each respective claims program authorized" after "carrying out its functions".

²² Sec. 511 (22 U.S.C. 1643j) of this Act, as added by Public Law 88—666, 78 Stat. 1113, October 16, 1964, was amended by sec. 5 of Public Law 89—262, 79 Stat. 988, approved October 19, 1965.

EXHIBIT 12

REGULATIONS GOVERNING THE RECEIPT AND SETTLEMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

Code of Federal Regulations

TITLE 45—PUBLIC WELFARE

Chapter V—Foreign Claims Settlement Commission of the United States

Subchapter A—Rules of Practice

PART 500—APPEARANCE AND PRACTICE BEFORE THE

- Sec.
- 500.1 Appearance and practice.
 - 500.2 Notice of entry or withdrawal of counsel in claims.
 - 500.3 Fees.
 - 500.4 Petition for fee exceeding ten per centum of amount paid on account of claim.
 - 500.5 Order allowing fee in excess of ten per centum of amount paid on account of claim.
 - 500.6 Suspension of attorneys.
 - 500.7 Restrictions on former employees.

AUTHORITY: §§ 500.1 to 500.7 issued under sec. 2, 62 Stat. 1240, as amended, sec. 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622

§ 500.1 Appearance and practice.

(a) An individual may appear in his own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; any officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia. With respect to Philippine war damage claims under the provisions of Public Law 87-616 (76 Stat. 411), a person may also be represented by an attorney at law in good standing with the Philippine Bar Association or the Philippine Supreme Court. However, such attorney may be required to furnish a certificate to this effect.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans' service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, addressed to the Foreign Claims Settlement Commission of the United States, Washington, D.C. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up membership, statements that the organization will not charge any fee for

refuse on the grounds of non-membership to represent any claimant who applies for such representation if he has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(d) A person may not be represented before the Commission except as authorized in paragraph (a), (b) or (c) of this section.

§ 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by claimant in his own behalf or requesting a substitution of attorneys, and counsel filing a claim on behalf of a claimant under Public Law 87-616, shall be required to file an authorization by claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that he had duly notified his client (claimant).

(c) When a claimant advises the Commission that counsel no longer represents him, a copy of the Commission's acknowledgement shall be forwarded to such counsel.

§ 500.3 Fees.

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Subchapter B and Subchapter F of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Title III of the Act shall not exceed ten per centum of the total amount paid on account of such claim, except that the Commission may upon petition, as prescribed in § 500.4, in its discretion enter an order authorizing such remuneration in an amount which exceeds the maximum otherwise permitted.

(c) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within Title I and Title IV of the Act shall not exceed ten per centum of the total amount paid on account of such claim.

(d) No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under Title V of the International Claims Settlement Act of 1949, as amended (claims against the Government of Cuba and the Chinese Communist regime), shall exceed 10 per centum of so much of the total amount of such claim, as determined by the Commission under Title V of the Act, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000.

(e) The total remuneration on account of services rendered or to be rendered to or on behalf of any applicant in connection with any application filed under Public Law 87-616 (76 Stat. 411) shall not exceed five per centum of the amount paid by the Commission on account of such application.

§ 500.4 Petitions for additional remuneration pursuant to section 317(b) of Title III of the Act.

A petition under section 317(b) of the Act for an order authorizing the
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317(a) of the Act shall be in writing and verified by the petitioner. It shall include (a) a fully itemized statement of all services at any time rendered by the petitioner on behalf of the claimant in connection with the claim with respect to which the petition is filed, whether rendered before or after the filing of the claim with the Commission, (b) a statement of all remuneration theretofore received by the petitioner on account of such services, and (c) an itemized statement to the best of petitioner's knowledge, information and belief, of all services theretofore at any time rendered by any other person or persons on behalf of the claimant in connection with such claim and of all remuneration paid on account of such services; shall state in detail such special circumstances of unusual hardship as, in the opinion of the petitioner, justify payment in excess of the maximum remuneration otherwise permitted by section 317(a) ; shall be accompanied, as exhibits, by all documents including agreements relating to remuneration, available to petitioner evidencing the allegations of his petition; and shall state the total amount of remuneration which it is believed should be authorized.

§ 500.5 Order allowing fees in excess of ten per centum of amount paid on account of cheaims under Tithee III of the International Cheaims Settlement Act of 1949, as amended.

The Commission may, upon the petition described in § 500.4 and supporting affidavit, after consultation with the claimant and consideration of the evidence, in its sole discretion, upon a finding that there exist special circumstances of unusual hardship which require the payment of a fee in excess of the maximum amount otherwise allowable, issue an order authorizing such excess, the said order to specify the amount of such excess.

§ 500.6 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or sections 4(f), 317 (a), 414, and 512 of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of the regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

§ 500.7 Restrictions on former employees.

(a) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall act in any way as agent or attorney for anyone other than the United States in connection with any matter before the Commission if he participated in the matter personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

(b) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the

District of Columbia, shall, for a period of one year following such service, appear personally before the Commission as agent or attorney for anyone other than the United States with respect to a matter which was within the boundaries of his official responsibility during the last year of his service as an officer or employee of the Government.

PART 501-SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.

- 501.1 Extent of authority.
- 501.2 Subpoenas.
- 501.3 Service of process.
- 501.4 Witnesses.
- 501.5 Depositions.
- 501.6 Documentary evidence.
- 501.7 Time.

AUTHORITY: §§ 501.1 to 501.7 issued under sec. 2, 62 Stat. 1240, as amended, sec. 3, 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622.

§ 501.1 **Extent of authority.**

(a) Subpoenas, oaths and affirmations. The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) Certification. The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 **Subpoenas.**

(a) Issuance. A member of the Commission or a designated employee may, on his own volition or upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for the issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Deposit for costs. The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover the fees and mileage involved.

(c) Motion to quash. If any person subpoenaed does not intend to comply with the subpoena, he shall, within 15 days after the date of service of the subpoena upon him, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) Appeal from interlocutory order. An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or

from the refusal to issue a subpoena for the production of documentary evidence.

(e) Order of court upon failure to comply. Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Public Law 696, 81st Congress, approved August 16, 1950, 50 U.S.C. App. 2001(d), may issue an order requiring such person to appear at the designated place of hearing, examination of investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of Process.

(a) By whom served. The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) Kinds of service. Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by first class or registered mail, or by telegraph or by publications.

(c) Personal service. Service by delivering in person may be accompanied by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer, or a director of the corporation to be served or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) Service by first class mail. Service by first class mail shall be regarded as complete, upon deposit in the United States mail properly stamped and addressed.

(e) Service by registered mail. Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers, is received by the Commission.

(f) Service by telegraph. Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) Service by publication. Service by publication is complete when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) Date of service. The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) Filing with Commission. Papers required to be filed with the agency

shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraph (e) and (f) of this section.

§ 501.4 Witnesses.

(a) Examination of witnesses. Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) Witnesses fees and mileage. Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) Transcript of testimony. Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy or transcript of his testimony or the documents produced.

§ 501.5 Depositions.

(a) Application to take. (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed (late of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination only where it is shown for good cause that such testimony is essential and that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) Who may take. Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) Examination and certification of testimony. At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and his testimony shall be reduced to writing by, or under the direction

of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with his certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, D.C. 20579, or to the field office designated.

(d) Admissibility in evidence. The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) Errors and irregularities. All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) Scope of use. The deposition of a witness, if relevant, may be used if the Commission finds: (1) That the witness has died since the deposition was taken; or (2) that the witness is beyond a distance greater than 100 miles radius of Washington, D.C., the designated field office or the designated place of the hearing; or (3) that the witness is unable to attend because of other good cause shown.

(g) Interrogatories and cross-interrogatories. Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, and his representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) Fees. A witness whose deposition is taken pursuant to the regulations in this part and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 **Documentary** evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the

issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

§ 501.7 Time.

(a) Computation. In computing any period of time prescribed or allowed by the regulations by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) Enlargement. When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion or notice, previous order or (2) upon motion permit the act to be done after the expiration of the specified period.

PART 503-PUBLIC INFORMATION

Sec.

- 503.1 Organization and authority—Foreign Claims Settlement Commission.
- 503.2 Material to be published in the FEDERAL REGISTER pursuant to Public Law 89-487.
- 503.3 Effect of nonpublication.
- 503.4 Incorporation by reference.
- 503.5 Public records.
- 503.6 Current index.
- 503.7 Effect of noncompliance.
- 503.8 Documents and records generally available for inspection.
- 503.9 Other records available upon written request.
- 503.10 Identification of records.
- 503.11 Appeal.
- 503.12 Exemptions.
- 503.13 Fees—policy and services available.
- 503.14 Fees for services.
- 503.15 Payment of fees and charges.

AUTHORITY: The provisions of Part 503 issued under sec. 3, Administrative Procedure Act, 5 U.S.C. 552, as amended by Public Law 90-23 (81 Stat. 54).

§ 503.1 **Organization and authority—Foreign Claims Settlement Commission.**

(a) The Foreign Claims Settlement Commission of the United States is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279), effective *July* 1, 1954. Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 22 U.S.C. 1621-1642) and the War Claims Act of 1948 (62 Stat. 1240; 50 U.S.C. 2001-2016).

(b) The Commission has jurisdiction to determine claims of U.S. nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized

under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The three members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by the Act of October 22, 1962 (76 Stat. 1107; 50 U.S.C. 2001). The President designates the Chairman.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of the affairs of the Commission, including but not limited to: (1) The appointment of personnel employed under the Commission; (2) the direction of employees of the Commission and the supervision of their official duties; (3) the distribution of business among employees and organizational units under the Commission; (4) the preparation of budget estimates; and (5) the use and expenditures of funds of the Commission available for expenses of administration.

(e) The Chairman pursuant to his responsibility hereby directs that every effort be expended to facilitate the maximum service to the public with respect to the obtaining of information and records in the spirit and the letter of the provisions of Public Law 87-487 amending section 3 of the Administrative Procedures Act, effective July 4, 1967.

(f) Requests for information, decisions, or records may be made in person or in writing to the Clerk, Foreign Claims Settlement Commission.

(g) The offices of the Commission are located at 1111 20th Street NW. (Vanguard Building), Washington, D.C. An information center for the convenience of the public is located on the fourth floor.

§ 503.2 Materials to be published in the *Federal Register* pursuant to Public Law 89-487.

The Commission shall separately state and concurrently publish the following materials in the FEDERAL REGISTER for the guidance of the public:

(a) Description of its central and field organization and the established places at which, the offices from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

§ 503.3 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the FEDERAL REGISTER and not so published.

§ 503.4 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class

of persons affected thereby shall be deemed published in the **FEDERAL REGISTER** when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 503.5 Public records.

The Commission shall, in accordance with this part, make the following materials available for public inspection and copying:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto.

(b). Those statements of policy and interpretations which have been adopted by the Commission.

To prevent unwarranted invasion of personal privacy, the Commission *may* delete identifying details when it makes available or publishes a decision, statement of policy, interpretation, or staff manual or instruction, and shall, in each such case, explain in writing the justification for the deletion.

§ 503.6 Current index.

The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by § 503.2 of this part to be made available or published. The index shall be available at the information center of the Commission, fourth floor, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20579.

§ 503.7 Effect of noncompliance.

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

§ 503.8 Documents and records generally available for inspection.

The following kinds of documents are available for inspection and copying at the public information center of the Commission.

(a) Rules of practice and procedure.

(b) Semiannual reports of the Commission.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments, the War Claims Act of 1948, with amendments, and related Acts.

(e) Claims Agreements with foreign governments within the jurisdiction of the Commission.

(f) Press releases, biographies, and other miscellaneous information of general interest to the public.

§ 503.9 Other records available upon written request.

Any written request to the Clerk, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. 20579, for records listed in paragraphs (a) through (g) inclusive, of this section, shall identify the record as provided in § 503.10. The Clerk shall evaluate each request in conjunction with the official having responsibility for the subject matter area, the General Counsel and the Executive Director, and shall make the record available

unless the Clerk shall notify the person making the request that no such record can be found; that the record is needed by the staff, or that the record falls within a specific exception. The following records are subject to this provision:

- (a) General correspondence.
- (b) Correspondence regarding interpretation or applicability of a statute or rule.
- (c) Correspondence and reports on legislation if made public by the Bureau of the Budget and Congressional Committee.
- (d) Filing and docketing of claims.
- (e) Records regarding final disposition of claims.
- (f) Claims applications of individuals.
- (g) Claims applications of legal entities.

§ 503.10 Identification of records.

A member of the public who requests permission to inspect or copy a record must identify the record sought in sufficient detail to enable the Commission staff to locate the record.

§ 503.11 Appeal.

Upon refusal of the Clerk to furnish a record, which has been requested in writing under § 503.9, the requesting person or entity may appeal in writing to the Chairman from the Clerk's action or failure to act.

§ 503.12 Exemptions.

The following records shall not be available: *Provided, however,* That nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress. Moreover, nothing in this paragraph shall preclude the consideration of any request received by the Commission to release information with respect to matters which may come within the exemptions.

(a) Records specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Executive Director, and the General Counsel, regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.

§ 503.13 Fees—policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such service are to be recovered by the payment of fees (Act of Aug. 31, 1951—5 U.S.C. 140). Upon written request directed to and within the discretion of the Foreign Claims Settlement Commission, there are available upon payment of the fees hereinafter prescribed, with respect to documents subject to inspection, services as follows:

- (a) Copying records/documents.
- (b) Certification of copies of documents.
- (c) Records search.
- (d) Transcripts of hearings when requested by claimants.

§ 503.14 Fees for services.

The basic fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(a) The copying of records and documents will be available at the rate of 25 cents per page (one side).

(b) The certification and validation of documents filed with or issued by the Commission will be available at \$1 for each such certification.

(c) To the extent that time can be made available, records and information search will be performed for reimbursement at the following rates:

(1) By clerical personnel at a rate of \$4 per person per hour.

(2) By professional personnel at an actual hourly cost basis to be established prior to search.

(3) Minimum charge, \$2.

(d) Exceptions: No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of Commission publications individually requested in person or by mail. In addition a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(1) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(2) The recipient is another governmental agency, Federal, State, or local, concerned with claims of nationals of the United States against foreign governments or having a legitimate interest in the proceedings and activities of the Commission.

(3) The recipient is a college or university.

(4) The recipient does not fall into subdivision (1), (2), or (3) of this subparagraph, but is determined by the Commission to be an appropriate recipient in the interest of its program.

(e) Transcripts of testimony and of oral argument taken by a private firm may be purchased directly from the reporting firm.

§ 503.15 Payment of fees and charges.

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Foreign Claims Settlement Commission, except for charges for transcript of hearings. Fees for transcripts of hearings are payable to the firm providing the services.

[Effective date. Part 503 became effective July 4, 1967.]

Subchapter C—Receipt, Administration and Payment of Claims Under the International Claims Settlement Act of 1949, as amended

PART 531—FILING OF CLAIMS AND PROCEDURES THEREFORE

Sec.

- 531.1 Time for filing.
- 531.2 Form and content.
- 531.3 Exhibits and documents in support of claim.
- 531.4 Acknowledgment and numbering.
- 531.5 Procedure for determination of claims.
- 531.6 Hearings.
- 531.7 Presettlement conference.

AUTHORITY: §§ 531.1 to 531.7 issued under sec. 3, 64 Stat. 13, as amended; 22 U.S.C. 1622.

§ 531.1. Time for filing.

(a) Claims under Title III of the Act shall be filed with Commission on or before September 30, 1956, except that claims pursuant to section 305 (Soviet Claims) shall be filed on or before March 31, 1956.

(b) Claims under Title IV (Czechoslovakian claims) of the Act shall be filed with the Commission on or before September 15, 1959.

(c) Claims under Title I of the Act (Polish claims) shall be filed with the Commission on or before March 31, 1962.

(d) Claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967.

(e) Claims under Title I of the Act pursuant to the Yugoslav Claims Agreement of November 5, 1964, shall be filed with the Commission on or before January 15, 1968.

(f) Claims under Title V of the Act against the Chinese Communist regime shall be filed with the Commission on or before July 6, 1969.

§ 531.2 Form, content and filing of claims.

(a) Claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., shall include all of the information called for in the appropriate form indicated below, and shall be completed and signed in accordance with the instructions accompanying the form.

(b) FCSC Form 285—Statement of Claim Against the Government of (Bulgaria, Hungary, Rumania, Italy, Soviet Union).

(c) FCSC Form 604—Claims against the Government of Czechoslovakia.

(d) FCSC Form 709—Claim against the Government of the Polish People's Republic.

(e) FCSC Form 666—Claims against the Government of Cuba.

(f) FCSC Form 701—Claims against the Government of Yugoslavia under the Yugoslav Claims Agreement of November 5, 1964.

(g) FCSC Form 780—Claims against the Chinese Communist regime.

(h) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims settlement agreement, or an intention to file a claim against a foreign country, shall not be considered as a timely filing of a claim under the statute or agreement.

(i) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

§ 531.3 Exhibits and documents in **support** of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies of originals certified as such by their public or other official custodian.

(b) Documents in foreign language. Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) Preparation of papers. All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 531.4 Acknowledgment and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 531.5 Procedure for determination of claims.

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission may issue a proposed decision in determination of a claim.

(c) Such proposed decision shall be delivered to the claimant or his attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such proposed decision addressed to the last known address of the claimant or his attorney of record. One copy of the proposed decision shall be available for public inspection at the office of the Commission. Notice of proposed decision shall be posted on the bulletin board at the office of the Commission on the day of its issuance and for 20 days thereafter.

(d) It shall be the policy of the Commission to post on said bulletin board other information of general interest to the claimants before the Commission.

(e) Where such proposed decision denies the claim in whole or in part, claimant may within 15 days of service thereof file objections to such denial assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.

(f) Public notice shall be promptly posted on said bulletin board of the

filing of any objection to, or request for a hearing on any proposed decision.

(g) Upon the expiration of 30 days after such service or receipt of notice, if no objection under this section has in the meantime been filed, such proposed decision shall, without further order or decision of the Commission, become the Commission's final determination and decision on the claim.

(h) If any such objections have in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue its final decision affirming or modifying its proposed decision, (2) issue a further proposed decision, or (3) on its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral argument.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the Commission for further submissions, the Commission may proceed to final decision and determination of the claim.

(j) (1) In case an individual claimant dies prior to the issuance of a final decision his legal representative shall be substituted as party claimant. However, upon failure to comply with the foregoing, the Commission may issue its decision in the name of the estate and, in case of an award, certify the award to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.

(2) Notice of the Commission's action under this subparagraph shall be forwarded to the claimant's attorney of record, or if claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.

(3) The term "legal representative" as applied in this subparagraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) After the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final decision has been issued on a claim, or a proposed decision has become the final decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the final decision or the date on which the proposed decision became the final decision; that it was not for want of due diligence that such evidence did not come sooner to his knowledge; and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and the reasons for failure to make earlier submission of the evidence.

531.6 Hearings.

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Orale testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at the least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to him.

§ 531.7 Presettlement **conference.**

The Commission on its own initiative or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

EXHIBIT 13

INSTRUCTION SHEETS AND FORMS

FOR PREPARING AND FILING CLAIMS AGAINST THE GOVERNMENT OF CUBA

GENERAL STATEMENT

READ CAREFULLY BEFORE COMPLETING CLAIM FORM

Public Law 88-666, approved October 16, 1964, amends the International Claims Settlement Act of 1949 (64 Stat. 12 (1950), 22 U.S.C. §§ 1621-1627 (1950)), as amended, by adding at the end thereof, Title V which authorizes the Foreign Claims Settlement Commission to receive and determine the amount and validity of claims by nationals of the United States against the Government of Cuba for (a) debts for merchandise furnished or services rendered by nationals of the United States; (b) losses arising since January 1, 1959 as a result of the nationalization, expropriation, intervention, or other taking thereof, or special measures directed against property including any rights or interests therein owned at the time by nationals of the United States; and (c) disability or death of nationals of the United States, including pecuniary losses and damages (e.g. loss of support, medical and funeral expenses, or other expenses), resulting from actions taken by, or under the authority of, the Government of Cuba since January 1, 1959.

Eligible Claimants.—A claim may not be considered under categories (a) and (b) above unless the property on which the claim is based was owned wholly or partially, directly or indirectly, by a national of the United States on the date of loss and unless the claim has been owned continuously thereafter by one or more nationals of the United States until the date of filing with the Commission. With respect to claims under category (c) above, Public Law 88-666 provides that in order to receive consideration, such claim must be filed by the disabled person or by his successors in interest, and in case of death of a United States national, claims may be filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damages (e.g., loss of support, medical and funeral expenses, or other expenses) on account of such death.

The statute further provides that no claim be considered under this section unless the property upon which it is based was owned by, or in the case of disability or death, the disabled or deceased person was, a national of the United States at the time of loss, injury or death, and if considered, such claims shall be considered only to the extent that it has been held by a national or nationahes of the United States continuously until the date of filing with the Commission.

National of United States Defined.—The term "National of the United States" is defined as (1) a natural person who is a citizen of the United States or (2) a corporation or other legal entity which was organized under the laws of the United States, or of any State, the District of Columbia, or Commonwealth of Puerto Rico, if 50 percent or more of the outstanding stock or other beneficial interests of such corporation or entity is owned by citizens of the United States.

Stockholders.—*Claims* of nationals based on ownership interests in corporations or other legal entities—(1) which are nationals of the United States will not be considered (inasmuch as such corporation or other legal entities are eligible claimants in their own right) ; (2) which are not nationals of the United States may be considered depending on the nature and extent of the interests therein. The amounts of any claim will reflect the proportion that

such interests bear to the entire ownership interests in the corporation or other legal entity.

Commission Action.—Public Law 88-666 provides that the Commission certify to each individual who has filed a claim the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by the Act. The Commission is also required to certify to the Secretary of State its determination with respect to each claim filed.

Assignments.—In case of assignment of a claim, the amount determined to be due on such claim shall not exceed the actual consideration paid by the assignee or assignees. It should be noted that the nationality requirements apply equally to both the assignor and assignee.

Offsets.—The Commission, in reaching a determination with respect to the amount of loss suffered by each claimant is required to deduct all amounts the claimant has received from any source on account of the same loss or losses.

Attorney Fees.—No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this law shall exceed 10 percent on the first \$20,000 of the award as determined by the Commission, plus 5 percent on any amount which is in excess of \$20,000.

Application of Other Laws.—To the extent they are not inconsistent with the provisions of this Act, subsection (b), (c), (d), (e), (h), and (j) of section 4 subsection (f) of section 7 of title I of the International Claims Settlement Act of 1949, as amended, are applicable to claims authorized under Public Law 88-666. These subsections pertain to procedural matters and are implemented under the Commission's Regulations (45 CFR 500.1 (1964)).

Payment of Claims.—It should be noted that Public Law 88-666 does not provide for the payment of any claim. In this connection, reference is made to the Senate Report (S. Rept. 1521, 88th Congress, 2d Session) with respect to this legislation (H.R. 12259) which reads, in part, as follows:

The Committee on Foreign Relations wishes to reiterate its position that the enactment of this legislation is not to be construed as any intention to authorize an appropriation now or in the future of Federal funds for the purpose of paying the claims of U.S. nationals against the Government of Cuba. The payment of such claims is not the responsibility of the U.S. Government. On the contrary, it is the responsibility of the Cuban Government, and under no circumstances should the American taxpayer be required to foot the bill for the payment of any part of these claims. It was with this specific understanding that the Committee on Foreign Relations decided to report H.R. 12259, which provides only for the receipt and determination by the Foreign Claims Settlement Commission of the amount and validity of claims of U.S. nationals against the Government of Cuba.

Claim Filing Period.—Within 60 days after the enactment of legislation making appropriations to the Foreign Claims Settlement Commission for the payment of administrative expenses in carrying out its functions under the Act, the Commission is required to give public notice by publication in the Federal Register of the time within which claims may be filed with the Commission. The time limit may not be more than 18 months after such publication. The Commission is required to complete its affairs not later than 3 years following the final filing date.

Penalty.—Any claimant, or person filing any claim on behalf of a claimant, who knowingly and willfully conceals a material fact or makes a false statement or representation with respect to any matter before the Commission shall, under law, forfeit all rights to any award or payment on account of this claim and in addition shall be subject to the criminal penalties provided in title 18, United States Code, section 1001.

All statements by persons other than the claimant which may be submitted in support of this claim shall include the following:

"The undersigned is aware that this statement is to be submitted to the Foreign Claims Settlement Commission of the United States in connection with the claim of - - - - - (Name of claimant) - - - - - and that any willfully false statement herein may subject the undersigned to criminal penalties provided by law in such cases."

Certain Awards Prohibited.—Section 208 of the Act prohibits an award to or for the benefit of any person who has been convicted of a violation of any provision of chapter 115, title 18, of the United States Code, or of any other crime involving disloyalty to the United States.

IMPORTANT.—All questions included in the statement of claim form must be answered where applicable. The statement of claim must be signed.

INSTRUCTIONS FOR COMPLETING FCSC FORM No. 666

The items listed below are numbered to correspond to the items or questions on the application form.

Item No. 1.—If claimant is an individual, give name in full (last, first, middle) indicating any other names heretofore used; if claimant is a corporation or other legal entity, give the entity's full name, indicating any other names it has used. If claimant is other than an individual or corporation (e.g., partnership, association, trust, decedent's estate, minor's estate, etc.), state its character and attach a copy of the partnership agreement, articles of association, trust indenture, letters of administration or letters testamentary, together with a certified copy of probated will, etc., whichever is appropriate. If the claimant is asserting a claim in a fiduciary capacity, describe the capacity of the claimant and the names, addresses, and the nature and extent of the interest of all beneficiaries, indicating the nationality of each such beneficiary on a separate sheet.

Item No. 2.—If claimant is an individual, give present residence; if claimant is a corporation, other legal entity, or partnership, etc., give principal place of business.

NOTE.—It is important that the Commission be notified immediately of any change in claimant's address, or his status (i.e., death, marriage, etc.). The same holds true as to dissolution, reorganization, or other changes in the status of corporations or entities filing claims or having any interest in a claim.

Item No. 3.—A person may be represented by an attorney at law admitted to practice before the courts of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico; however, claimants are not required to be represented by counsel.

Item No. 4.—Give the dollar amount claimed for (a) all unimproved land and (b) all improved real estate in the first column with the total amount for these two categories in the column marked "Total claimed."

Item No. 5.—Give total dollar amount claimed for all personal property except stock shares, securities, and notes.

Item No. 6.-Give total dollar amount claimed for stock share interests in assets of corporations or other entities. Give names of such corporations or entities on a separate sheet if space is not sufficient. State dollar amount claimed for other securities and identify.

Item No. 7.-Give dollar amount claimed for (a) debts for goods and services owed by nationalized enterprises or Cuban Government, and (b) mortgages, liens and other charges upon property taken, in the first column with the total of the two in the column marked "Total claimed." The term "property" as defined by paragraph (3) of section 502 of the Act, includes 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.

Item No. 8.-This includes claims by successors in interest to a disabled person who may have died from causes other than those which resulted from wrongful acts of the Cuban Government or authorities. Successors in interest (including widows, widowers, children, parents, brothers and sisters, and other near relatives) may have a claim also for loss of support and for medical, funeral, and other expenses paid by the decedent himself or his estate. Such claims may be in addition to the amount claimed for death or disablement of the American citizen.

Item No. 9.-Show the total of items 4, 5, 6, 7, and 8 as the total amount of the claim in dollars.

Item No. 10.-A native-born American citizen should submit a birth certificate or, if such certificate is not obtainable, a baptismal certificate, a certified copy of the record of baptism, passports, etc. A naturalized person, or a person who acquired U.S. citizenship by marriage, or through his parent(s) must complete, in duplicate, and return to this Commission the enclosed "Request for Confirmation of Naturalization," Form DSP-13. Do NOT send this form to the Immigration and Naturalization Service.

Item No. 11.-In case of claims by corporations or other legal entities, proof of 50 percent or more ownership by natural persons who were U.S. citizens will, wherever feasible, be established as indicated in item 10 above. Where stockholders are many in number, the Commission will consider a sworn statement by the secretary or other principal officers of the corporation (or other legal entity) certifying, for claims based upon direct ownership by juridical persons, as to the percentages of the outstanding capital stock or proprietary interests owned by nationals of the United States at the date of loss and continuously until the date of filing this claim.

Item No. 12.-If the claimant has at any time lost his U.S. nationality, a detailed statement should be attached indicating when and how such nationality was lost, and when and how it was reacquired, together with all pertinent documentary evidence.

Item No. 13.-Describe in detail the cause of action upon which the loss of property, or the death, injury, or physical disability of an American citizen may be attributable. Indicate the exact location in which such loss, death, or physical injury occurred. A certified copy of any specific decree or order taking or interfering with claimant's ownership of the property should be supplied together with affidavits of persons having personal knowledge of wrongful action with respect to the property, setting out fully the nature and date of such acts and by whom taken. Any other documentary evidence

to establish action taken, such as laws, resolutions, requisition order, receipts for property taken, etc., should be included.

Item No. 14.-Describe in detail the property involved, including the exact location of the property at the time of its nationalization or other taking, original cost, subsequent improvements, amount of income derived from the property during the year immediately preceding the loss, value of property at time of loss, including appraisals, insured and tax valuations, extent to which depreciation has been taken into account in arriving at actual value. Proof of the foregoing may be in the nature of contracts, deeds, vouchers, etc., photographs of property duly authenticated, itemized list of personal property reflecting original cost, depreciation and value at time of loss, and affidavits of persons having personal knowledge of the property, the nature and amount of damages sustained, and who are qualified to express reliable opinions as to the extent of damage.

Item No. 15.-Complete chronology of medical histories should be given in case of personal injuries or disabilities, medical costs, etc. Claims based upon the death of an American citizen should contain a statement of including date and place of birth of deceased, citizenship status at time of death, relationship to claimant, names and addresses of heirs; and the basis of which the amount of the claim is computed.

Item No. 16.-Certified copy of deeds, extracts from property registers contract of purchase or other evidence of claimant's ownership of property should be furnished. In the event the property was inherited from a decedent who died intestate and no proceedings have been instituted in connection with his estate, give name in full, relationship to the claimant, and submit a certified copy of decedent's death certificate or, if none is available, other documentary proof on which you rely to establish his death and the date thereof. In such event submit, also, claimant's affidavit and the affidavits of two others who are familiar with the facts, reciting the name, age address, and nationality of all relatives surviving.

Item No. 17.-Section 505(a) of the act precludes claims based upon an ownership interest in any entity, such as a stockholder, an association member, etc., if the entity itself qualifies as an eligible claimant. In other words, if the entity comes within the definition of the term "national of the United States," a stockholder or member would not be an eligible claimant for his proportionate share of any compensable loss sustained by the entity.

Where any corporation or other entity does not qualify as an eligible claimant in its own right, section 505(b) of the act permits a stockholder to file a claim for his proportionate share of the loss. This would be a claim based upon the loss of direct proprietary interest in such entity.

Section 505(c) provides for claims based upon an indirect ownership of a proprietary or similar interest in a corporation or other entity which does not qualify as an eligible claimant in its own right. Such a claim would arise, for example, where the claimant owned stock in a foreign corporation which, in turn, owned stock in another foreign corporation which suffered a loss. In such a case a claim may be filed provided that at least 25 percent of the entire ownership interest in the corporation which directly suffered the loss was owned by nationals of the United States at the time of the loss.

Item No. 18.-State value of property at time of loss. If any item entering into computation of the loss, such as original purchase price, cost of improvements, etc., entered into these calculations, the equivalent thereof

in terms of U.S. currency should be stated based upon the rate of exchange in effect at the time the loss occurred.

Item No. 19.—If claimant has recovered through insurance or otherwise for property losses as indicated under subparagraph (b) of item 19, proof as to the amount received or the amount expected to be received should be submitted.

Item No. 20.—No special instructions.

Item No. 21.—Chapter 115 of title 18 of the United States Code pertains to such crimes as treason, rebellion or insurrection, seditious conspiracy, advocating overthrow of the U.S. Government, failure to register as an organization which advocates the overthrow or control by force of the Government of the United States, affecting the Armed Forces of the United States during war, recruiting for service against the United States, and enlistments to serve against the United States.

Items Nos. 22 and 23.—No special instructions. Section 7(f) of the International Claims Settlement Act of 1949, as amended, which is incorporated by reference under section 509 is quoted as follows: "Nothing in this title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government."

FCSC Form 666

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

In the Matter of the Claim of

Against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended by Public Law 88-666, approved October 16, 1964.

Claim No. CU - - - - -

(DO NOT WRITE IN
THIS SPACE)

An original and our copy of this form and each supporting exhibit must be filed. Each document in a foreign language must be accompanied by a verified English translation. Answers should be typed or printed. Attach additional sheets needed for any items where space on the form is insufficient. The information and instruction sheet attached hereto with directions for each numbered item on the claim form was prepared for the purpose of assisting you in the preparation of your claim. It is suggested that you read it thoroughly before completing this claim form.

IMPORTANT—ALL QUESTIONS CONTAINED IN THIS FORM MUST BE ANSWERED. If claimant does not know the answer to a question or the question is not applicable to his claim, claimant should write "UNKNOWN" or "INAPPLICABLE" in the proper space.

- Name of claimant -----
(Last) First) (Middle)
- Address of claimant -----
- Name and address of attorney (if any) -----

SUMMARY OF LOSSES CLAIMED

	Amount in dollars	Total claimed
4. Real estate:		
(a) Land	-\$---	
(b) Buildings		\$---
5. Personal property, furniture, equipment, merchandise, etc.		
6. Securities (name of corporation entity		
7. Debts :		
(a) Owed by nationalized enterprises or Cuban Govern ment	\$---	
(b) Charges upon property nationalized or taken		
8. Death, injury, or permanent disability		\$
9. Total amount of claim		\$

10. If claimant is an individual, indicate how United States nationality was acquired (check one), and submit supporting documentary evidence.

- | | | | | |
|--------------------------|-----------------|------------|--------------------------|----------------|
| | Birth | Date | Place | |
| <input type="checkbox"/> | Naturalization | Date | Place | Cert. No. |
| <input type="checkbox"/> | Marriage | Date | Name of spouse | |
| <input type="checkbox"/> | Through parents | Date | Name of parent (s) | |
| <input type="checkbox"/> | Reacquired | Date | | |

(This information must be followed with respect to a deceased person. If claim is being filed by the heir or survivor of a deceased person, this information must also be furnished with respect to such person.)

11. If claimant is a corporation or other legal entity, complete following:

- (a) At all times between and the presentation of this claim, more than 50 percent of the outstanding capital stock of all classes or of other beneficial interest in the claimant has been owned, directly or indirectly, by persons who were then United States nationals. (Indicate in blank space the date on which such continuous ownership commenced.)
- (b) On the date of loss, the claimant has outstanding shares of capital stock of all classes or other evidence of beneficial interest, which were then held by persons.
(Number)
- (c) On the date of the presentation of this claim, the claimant had outstanding shares of capital stock of all classes or other evidence of beneficial interest, which were then held by
(Number) persons.

Attach a statement by the secretary or other principal officer of the corporation (or other entity) certifying above.

12. Have here been any changes in nationality status of claimant since the date of loss? (Yes or No). If so, explain

NATURE OF CLAIM

13. The claim arose on at
(Date of loss) (Location)
 as a result of the following action

14. If the claim is based upon real or personal property, please furnish description of property, location at time of loss or damage, and nature of claimant's interest.

15. If this claim is based on losses or injuries other than real or personal property covered under the preceding questions, please furnish description of such losses or injury.

16. If this claim is based on loss of property, state when and how such property was acquired:

(a) If purchased, give date of purchase -----, and consideration paid -----

(b) If inherited, give date of inheritance -----, and from whom ----- . Value at time inherited ----- . What was nationality of the previous owner?

(c) Cost of improvements, if any, made since acquisition -----

(d) Do you know of any other person, firm, corporation, or other legal entity, now or since the date of loss who had or who has any interest in the property above described or in the claim hereby asserted? (Indicate the names and present addresses of all such parties.)

17. If the claim is based on the ownership of securities in a corporation, association, or other entity, indicate below the name, address, place of incorporation of such corporation, association or entity, and the number of shares outstanding.

----- Name) -----	----- (Address) -----	----- (Place of incorporation)	----- (Number shares)
----- Name) -----	----- (Address) -----	----- (Place of incorporation)	----- (Number shares)
----- Name) -----	----- (Address) -----	----- (Place of incorporation)	----- (Number shares)

AMOUNT OF CLAIM

18. This claim is asserted for the total amount of \$ ----- . It is computed as follows: -----

19. (a) Has claimant filed or asserted any claim with respect to the subject matter of this claim or any related matter with or against any other agency of the United States Government or any other place? ----- (Yes or No). If the answer is "Yes," give date of filing, agency or other place with which claim was filed, amount claimed, disposition of claim and amount of award, if any -----

(b) Apart from this claim, has claimant or any predecessor in interest received, or has he any reason to expect to receive, any benefits, pecuniary or otherwise, on account of the loss resulting from the action for which this claim is filed? (If so, explain.) -----

- (c) Has a tax deduction ever been asserted by claimant or any other predecessor with respect to losses described in this claim? - - - - - (Yes or No). If answer is "Yes," give year such claim was asserted, amount of loss claimed, whether loss was allowed, and name of person claiming such tax deduction - - - - -

20. Set forth any additional facts pertinent to this claim.

GENERAL

- 21. **Has** the claimant or any person for whose benefit any award upon this claim may inure, been convicted of a violation of any provision of Chapter 115 of Title 18 of the United States Code, or any other crime involving loyalty to the United States? - - - - - (Yes or No). If answer is "Yes," specify - - - - -

22. (In the case of an individual claimant.) The undersigned states that he is the claimant herein; that he has read the foregoing statement of claim and each statement and exhibit attached thereto and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Dated - - - - - , 196- . -----
Signature or mark

If by mark, two witnesses: Address - - - - -
 Name - - - - - Address - - - - -
 Name - - - - -

23. (For use in the case of a corporate or other entity claimant.) The undersigned states that he is the (Title or Office) of the claimant herein; that he is duly authorized to sign and file this claim on behalf of the claimant; that he has read the foregoing statement of claimant and each statement and exhibit attached thereto and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Dated - - - - - , 196⁶ -- _ -----
(Signature)

SEAL (If any; if none, so state).

SELECTED DECISIONS

CUBAN CLAIMS PROGRAM

IN THE MATTER OF THE CLAIM OF JOHN KORENDA

Claim No. CU-8255—Decision No. CU-3580

Late filed claims may be considered provided the determination of timely filed claims is not impeded thereby.

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 JOHN KORENDA on June 25, 1968 on behalf of the survivors of Peter Korenda, for \$100,000.00, being the amount of an admitted debt of the Republic of Cuba. Claimant and all members of the Korenda family have been nationals of the United States at all times pertinent to this claim.

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. 388 (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, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

On November 1, 1965, the Commission filed notice with the Federal Register that it would receive, during the period ending at midnight, May 1, 1967, claims against the Government of Cuba.

Under the Commission's regulations, any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (FCSC Reg., 45 C.F.R. § 531.1(g) (Supp. 1967).)

This claim was presented to the Commission on June 25, 1968. There is no record of a prior communication to this Commission from claimant herein.

The first question for consideration is whether the Commission may properly consider this claim on its merits inasmuch as it was presented subsequent to the closing of the formal filing period.

¹ This decision was entered as the Commission's Final Decision on April 25, 1969.

Claimant, JOHN KORENDA, acting on behalf of the interested members of the Korenda family, that is, the survivors of Peter Korenda, and of Anna Korenda, both now deceased, has informed the Commission that he is a merchant seaman, and that in the course of following this occupation he received no notice of the inauguration of this claims program, nor of the filing period.

The declared purpose of the Congress in enacting this legislation was to provide a vehicle for American nationals to have the validity and amounts of their losses decided by the Commission and reported to the Secretary of State for possible use in future negotiations of a claims settlement agreement with a friendly Government in Cuba.

In view of this purpose, the Commission holds that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. The Commission further holds that the losses determined in the claims filed after the deadline shall be separately certified to the Secretary of State.

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.

Evidence of record in this case discloses that one Peter Korenda, an American tourist in Habana, was shot and killed on March 13, 1957, by Cuban authorities who were at that time suppressing an attack of insurrectionists upon the Presidential Palace of Habana.

The claim was first presented to the Government of Cuba by the American Embassy at Habana on behalf of Mrs. Anna Korenda, mother of Peter Korenda, for damages sustained as a result of the death of her son. The Cuban Ministry of State acknowledged the receipt of the claim on June 11, 1958. On September 7, 1959, discussions were held in Habana between an Embassy official, a representative of the Cuban Government and JOHN KORENDA, acting for himself and other members of the Korenda family (Mrs. Korenda being then deceased). During these discussions the Cuban Government admitted its liability in the matter and offered to pay Mr. Korenda \$100,000 in full settlement of the claim. Mr. Korenda accepted the offer and agreed to be paid in two equal installments, the first of which was to be made on October 9, 1959. He returned to Cuba on that date, with appropriate powers of attorney and other documentation to effect collection of the first installment. An appointment for October 10, 1959 was not kept by Cuban authorities. It has been said that the failure to make payment was due to a stringency in the Cuban Government's dollar exchange position at that time. All attempts to effect collection of the debt have been unsuccessful.

The Commission has carefully considered all the evidence of record and finds that inasmuch as this debt of the Government of Cuba has not been paid claimant has succeeded to and suffered a loss within the scope of Title V of the Act, in the amount of \$100,000 as of October 10, 1959. (See *Claim of Clemens R. Maise*, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

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 JOHN KORENDA 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 Thousand Dollars (\$100,000.00) with interest thereon at 6% per annum from October 10, 1959 to the date of settlement.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission March 26, 1969.

IN THE MATTER OF THE CLAIMS OF AOFC, INC.

Claim Nos. CU-3671 and 3672—Decision No. CU-5894

The claim of a legal entity, such as a corporation, is owned by the entity and not its stockholders. The corporate veil may be pierced and the American stockholders may claim their stock interests only if (1) the claim arose in favor of a non-L.¹ S. national corporation, and (2) that corporation continued to own that claim until the date of filing with the Commission.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by AOFC, INC. Claim No. CU-3671 in the amount of \$711,044.98 is based upon debts due from a Cuban corporation. Claim No. CU-3672 in the amount of \$250,250.00 is based upon a stock interest in another Cuban corporation.

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.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 percentum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An authorized officer of claimant has certified that claimant was organized under the laws of New York on December 20, 1962, and that at all times from that date until the date of filing claims all of claimant's outstanding capital stock was owned by the International Basic Economy Corporation, also organized under the laws of New York. That officer, who is also an officer of the parent corporation, has certified that at all pertinent times more than 50% of the parent's (IBEC) outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The facts in both of these claims are undisputed. It appears from the record (CU—3671) that a loan was made in 1956 by an American corporation, AOF Corp., to a Cuban corporation, Acetafil, S.A. In 1957 the AOF Corp. dissolved and all its rights under the loan agreement were transferred to AOF Co., a corporation that qualifies as a national of the United States under Section 502(1) (B) of the Act.

Apparently regular payments on account of the loan were made by the Cuban corporation until December 1, 1959 when an amount on account of principal and interest became due. The Cuban corporation took appropriate steps to send the funds to the United States through the National Bank of Cuba. However, the Cuban authorities barred the transfer pursuant to the foreign exchange laws of Cuba. As a result the funds were never sent to AOF Co., and no further payments on account of the loan were ever made. The record contains a copy of a letter, dated November 26, 1959, from an officer of the Cuban corporation to AOF Co. indicating that the Cuban corporation had sufficient funds to make the payment due on December 1, 1959. It further appears from claimant's statements that the Cuban Corporation was intervened by the Government of Cuba in October 1960.

The record (CU—3672) shows that on April 5, 1957, Transoceanic Development Corp., Ltd., a corporation organized under the laws of Canada, acquired 2,500 Class B shares of common stock in Cia. Antillana de Acero, S.A., a corporation organized under the laws of Cuba. The evidence includes a copy of Resolution No. 1, issued by the Cuban Ministry of the Treasury on March 25, 1960, pursuant to which Cia. Antillana de Acero, S.A. was intervened. The Commission so found in *Claim of Independence* and the said rights under the loan agreement, which constitute the *Foundation*, Claim No. CU—2152.

On January 20, 1960, AOF Co. dissolved and merged into the Canadian corporation, and all its rights under the said loan agreement were transferred to the Canadian corporation. Therefore as of January 20, 1960, the Canadian corporation owned 2,500 shares of stock in Cia. Antillana de Acero, S.A. and the said rights under the loan agreement, which constitute the

properties upon which both of the claims herein are based. It further appears from claimant's statements that on December 20, 1962, IBEC acquired all the outstanding shares of stock of the Canadian corporation, and caused its wholly-owned subsidiary, AOF Co., Inc., claimant to be organized. On December 31, 1962, IBEC caused the Canadian corporation to transfer all of its assets, including the subject matters of these claims to the claimant.

With respect to Claim No. CU-3671, the Commission has held that the Cuban Government's implementation of Law 568 of September 29, 1959, concerning foreign exchange, was not in reality a legitimate exercise of sovereign authority, but constituted an intervention by the Government of Cuba in the contractual rights of those who, like AOF Co., were thus adversely affected, and resulted in a taking of property within the meaning of Section 503(a) of the Act. (See *Claim of The Schwarzenbach Huber Company*, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and *Claim of Etna Pozzolana Corporation*, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46) Accordingly, the Commission finds that on or about December 1, 1959 property belonging to AOF Co. was lost as a result of intervention by the Government of Cuba in the contract with Acetafil.

In March 1960, a loss of property was sustained by the Canadian corporation by intervention of Antillana. On December 31, 1962, claimant succeeded to both losses.

The sole issue presented by these claims involves the meanings of Sections 504(a) and 505 of the Act.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

In other words, a claim filed under Section 503(a) of the Act "shall" not be considered unless it was owned, in whole or in part, directly or indirectly, by a national of the United States on the date of loss, and unless it was so owned continuously thereafter until the date of filing with the Commission. The test applied in this respect is whether each owner of the claim from the time it arose until filing with the Commission qualifies as a national of the United States, as defined by Section 502 of the Act. Accordingly, the Commission has held consistently that if there is any break in the chain of United States nationality at any time between the date of loss and the date of filing, the claim must be denied. (See *Claim of F. L. Smidth & Co.*, Claim No. CU-0104, 25 FCSC Semiann. Rep. 44 [July-Dec, 1966] and *Claim of Sigridur Einarsdottir*, Claim No. CU-0728, id. at 45.)

Section 505 provides, as to Corporate Claims, as follows:

(a) A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia,

or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.

(b) A claim under section 503 (a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interests thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

As indicated by its heading, "Corporate Claims," Section 505 governs claims filed under Section 503(a) based on stock interests in corporations. In the absence of Section 505, no valid claim based on a stock interest could be filed under Section 503(a) because all property of a corporation belongs to the corporation, not its stockholders. Section 505, in effect, pierces the corporate veil and permits certain claims based on stock interests in corporations to be considered.

Claimant availed itself of the provisions of Section 505 when it filed Claim No. CU-3672, based on a stock interest in Cia. Antillana de Acero, S.A., a Cuban corporation. Since the asserted stock interest in this Cuban corporation was owned directly by claimant's predecessor in interest, claimant has filed its claim under Section 505(b) of the Act.

Claimant contends, in effect, that its claims satisfy the nationality requirements of Section 504(a) of the Act. With respect to Claim No. CU-3671, claimant states that on December 1, 1959 the claim arose in favor of AOF Co., a national of the United States within the meaning of Section 502(1) (B). Although the claim was owned by a Canadian corporation from January 20, 1960 to December 31, 1962, claimant states that the claim is valid because more than 50% of the outstanding capital stock of the Canadian corporation was owned by nationals of the United States. The same contention is urged with respect to Claim No. CU-3672 which was owned by the Canadian corporation on March 25, 1960, the date of loss.

Upon consideration of this entire matter, the Commission finds that it is constrained to reject claimant's contentions. Claimant has fallen into error by confusing the provisions of Section 504(a) with those of Section 505. As indicated above, Section 504(a) governs all claims under Section 503(a), whether or not based on stock interests in corporations.

When the test of Section 504(a) is applied to each owner of the claims herein, it is clear that there were breaks in the chains of United States nationality between the respective dates of loss and the date of filing. On January 20, 1960 when Claim No. CU-3671 was transferred to the Canadian

corporation, the claim was not then owned by a national of the United States within the meaning of Section 502(1) (B) of the Act. The Canadian corporation was organized under the laws of Canada, not "under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico." The Commission therefore finds that the Canadian corporation does not qualify as a national of the United States within the meaning of Section 502(1) (B). (See *Claim of Cia. Ganadera Deerra, S.A.*, Claim No. CU-0726, 25 FCSC Semiann. Rep. 47 [July-Dec. 1966].) The Commission further finds that insofar as Claim No. CU-3671 is concerned, any claim that arose on December 1, 1959 by virtue of the intervention in the Acetafil, S.A. contract, arose in favor of a national of the United States but passed into the hands of a non-United States national. Similarly, with respect to Claim No. CU-3672 this was owned by the Canadian corporation on March 25, 1960, the date of loss.

The fact that more than 50% of the outstanding capital stock of the Canadian corporation was owned by nationals of the United States is immaterial because these claims were not filed by the stockholders of the Canadian corporation, but by its successor in interest. Since Canadian corporation had assigned its claims to claimant herein on December 31, 1962, prior to the date of filing with the Commission, the stockholders of the Canadian corporation could no longer file valid claims under Section 503 (a) of the Act. The Commission holds that Section 505 applies only when a claim is filed under Section 503(a) based on a stock interest in a corporation. Accordingly, the Commission finds that Section 505 is inapplicable to these claims.

The Commission finds that these claims were not owned by nationals of the United States continuously from the dates they arose until the date of filing with the Commission. Accordingly, these claims are denied. The Commission deems it unnecessary to consider other elements of these claims.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission October 14, 1970.

FINAL DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision denying these claims for the reason that the claims failed to meet the nationality prerequisites of Section 504 (a) of the Act.

The undisputed facts are as follows: Claim No. CU-3671 arose in favor of a United States national corporation, and was thereafter transferred to a non-United States national corporation, a Canadian entity, while Claim No. CU-3672 arose in favor of that Canadian corporation. Prior to the date of filing with the Commission, the claims were transferred to a United States national corporation, the claimant in both cases.

On the basis of these facts the Commission held that the claims were not owned by nationals of the United States continuously from the dates they arose until the date of filing, and the claims were denied pursuant to the express provisions of Section 504 (a) of the Act.

Council for claimant objected to the Proposed Decision, submitted a supporting brief, and requested an oral hearing which was held on March 17, 1971.

At that hearing counsel submitted a supplementary brief and argued before the Commission on behalf of claimant. The burden of the argument

was that about 75 percent of the outstanding capital stock of the Canadian corporation was owned by United States nationals at all pertinent times, thereby assertedly satisfying the prerequisites of Section 504(a) of the Act. On that basis counsel contended that the claims are valid to that extent, and urged that they be allowed *pro tanto*. In effect, counsel argued that the claims were owned by the stockholders of the Canadian corporation, which stockholders transferred their claims to the United States national corporation that filed the claims with the Commission.

Upon consideration of the entire record, the Commission finds no merit in counsel's contentions. The Commission has, over the years, administered several claims programs authorized pursuant to other titles of the same Act here under consideration, in which there were identical provisions insofar as the nationality prerequisites and claims for stock interests in corporations are concerned.

In a claim directly in point filed under Title III of the Act, it appeared that an American individual directly suffered the loss in question, and his claim was later acquired by a domestically organized corporation that filed the claim with the Commission. The record showed that, *except for the period between 1944 and 1949*, more than 50 percent of that claimants outstanding capital stock was owned by United States nationals from the date of acquisition of the claim by claimant until the date of filing with the Commission. In that period of about five years, more than 50 percent of the stock was owned by Mexican nationals.

The Commission held that the claim was not owned by nationals of the United States continuously from the date it arose until the date of filing with the Commission, and the claim was denied. (See *Claim of American Trust Company*, Claim No. SOV—42,528, cited as a precedent of the Commission with respect to nationality prerequisites, at FCSC Semiann. Rep. 21 [Jan.—June 1957].)

The Commission has consistently adhered to that principle in determining claims under the Act. The Commission reaffirms its holding that the claim of a legal entity, such as a corporation, is owned by the corporation like any other of its assets and not by its stockholders. Under Title V of the Act, when a claim has arisen in favor of a corporation, the corporate veil may be pierced and its American stockholders may claim their proportionate direct stock interests *only if* (1) the claim arose in favor of a non-United States national corporation, and (2) that corporation continued to own the claim until the date of filing.

In the instant case, Claim No. CU—3671 arose in favor of a United States national corporation, but subsequently was acquired by a Canadian corporation. The Commission finds that that claim then ceased to have the requisite character to serve as a basis for a certification under Title V and this is so irrespective of whether a small percentage or all of the Canadian corporation's outstanding capital stock was owned by nationals of the United States. The stockholders of the Canadian corporation owned no claim which they could validly assign to the American corporation that filed the claim. Claimant, having thus acquired from the Canadian corporation a claim which could not be certified under Title V, can occupy no better position than its predecessor in interest.

Claim No. CU—3672 arose in favor of a non-United States national corporation but that corporation did not retain the claim until the date of filing, but transferred it to a United States national corporation that filed

the claim. Since that claim arose in favor of a nonnational of the United States, the claimant acquired another claim which was invalid, so far as Title V is concerned, on the date of loss. The claim was not retained by the Canadian corporation until the date of filing, and therefore its American stockholders could neither file a claim based upon their proportionate interests as permitted by Title V, nor assign a valid claim to the American claimant.

Therefore, the Commission finds no basis for altering the decision previously entered. Accordingly, the Proposed Decision of October 14, 1970 is affirmed in all respects.

Dated at Washington, D.C. and entered as the Final Decision of the Commission April 21, 1971.

IN THE MATTER OF THE CLAIM OF CUBAN ELECTRIC COMPANY

Claim No. CU-2578—Decision No. CU-4122

Claims for sums of money expended for resettlement of employees and separation payments made to employees are not covered by Title V of the Act because such losses are not the direct result of the nationalization of property.

Losses resulting indirectly from action by the Government of Cuba other than the taking of property are not within the purview of Title V of the Act.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for an amount in excess of \$323,000,000.00 was presented by CUBAN ELECTRIC COMPANY based upon asserted losses resulting from the nationalization of its assets in Cuba.

By Proposed Decision dated October 21, 1969, the Commission found that claimant qualified as a national of the United States, that its assets in Cuba were nationalized by the Government of Cuba on August 6, 1960, and that claimant had sustained a loss under Title V of the Act in the amount of \$266,513,667.40. Portions of the claim for the following items were denied:

Debt of Cuban Government.....	\$ 700,000.00
Liability to Suppliers.....	499,186.69
Loss on equipment and supplies.....	2,138,614.39
Preservation of assets.....	185,297.00
Resettlement of employees.....	314,866.90
Funding retirement plan.....	599,663.00

In addition, a deduction from the total value of claimant's Cuban assets (\$319,367,165.95) for taxes (\$2,865,397.00), liabilities under Labor Laws for Employees Sickness Fund (\$322,142.00), debt to Financiera Nacional de Cuba (\$37,920,000.00), and mortgage bonds (\$11,745,959.55) was made to determine claimant's actual losses.

Claimant filed objections to the Proposed Decision, objecting specifically to the denial of the items set forth above and to the deductions and set-offs applied to the total value of its assets. At an oral hearing on June 4, 1970, argument was made by counsel for claimant and further written argument submitted after the hearing.

On the basis of the oral argument, the Commission now finds that claimant

sustained an additional loss in the amount of \$1,054,746.22 for equipment and supplies as the result of the nationalization of its assets by the Government of Cuba on August 6, 1960

Concerning the debt of the Cuban Government which claimant had listed under "Investments in Cuba," claimant has not established that this debt was an enforceable debt on January 1, 1959 although listed as an asset on claimant's records. It appears that this amount had been owed since prior to 1948 and claim therefor must be denied. As for the losses claimed for equipment unsold and not nationalized, since it was in the United States, and the preservation of same, the Commission is not persuaded that such items are within the scope of Title V of the Act and the denial of these items is affirmed. As for the payments to former employees and the funding of the pension account, although commendable, the Commission finds that they are not compensable or certifiable as a loss within the purview of Title V of the Act.

Claimant also argued against the deduction from the value of its Cuban assets of liabilities to Cuban governmental agencies, taxes, and mortgage bonds certified as losses to other claimants under Title V. It is contended that the Commission should restrict itself to determining only the value of the assets lost and leave the application of set-offs or deductions to such time as a fund is available for payment of claims. However, the Commission has a mandate to determine the losses of United States nationals as a result of the actions of the Government of Cuba, and since the actions of the Government of Cuba concerning claimant took place on August 6, 1960, the value of the claim against Cuba is determined as of that date. To determine the value of a claim, any set-offs and deductions must be applied now, not reserved for future consideration. Further, set-offs have been consistently deducted by this Commission on claims for nationalized property, when applicable, since the Yugoslav Claims Agreement of 1948. (See *Claim of Helen Devich.*, Claim No Y-697, Decision No Y-800.)

Claimant based further argument against deductions on computations illustrating the recovery for stockholders and creditors with and without deductions if Cuba should pay 50% or 75% of the total losses. Again, however, the Commission's determination concerns the amount of loss sustained as of August 6, 1960, the date of nationalization, which amount is definite and not subject to adjustment on the basis of any subsequent agreement.

Accordingly, the Commission concludes that claimant sustained the additional loss of \$1,054,746.22 for a total loss of \$267,568,413.62, on August 6, 1960 within the meaning of Title V of the Act.

The certification of loss as restated below, will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that Cuban ELECTRIC COMPANY sustained a loss, as a result of actions by 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 Sixty-seven Million Five Hundred Sixty-eight Thousand Four Hundred Thirteen Dollars and Sixty-two cents (\$267,568,413.62) with interest at 6% per annum from August 6, 1960 to date of settlement Dated at Washington, D.C., Aug. 19, 1970

tional Claims Settlement Act of 1949, as amended, was presented by CUBAN ELECTRIC COMPANY for \$323,570,419.38.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that Cuban Electric was organized under the laws of the State of Florida in 1927, and that in 1960 there were 3,600,011 shares of common stock outstanding, of which 3,158,806 were owned by American & Foreign Power Company Inc. and 291,261 were owned by other persons whose addresses were in the United States. The record further shows that American & Foreign Power Company Inc. (since merged into Ebasco Industries Inc. and subsequently into Boise Cascade Corporation) had 7,312,526 shares outstanding on August 6, 1960 of which 0.17% was sold by non-residents of the United States and 50.3% by the Electric Bond and Share Company which was owned at least 97% by United States nationals at all times. The Commission holds that CUBAN ELECTRIC COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Evidence establishes that claimant, beginning in 1928, acquired properties of small utility companies in Cuba. In 1960 it provided more than 90% of all electricity sold in Cuba and furnished manufactured gas in the City of Havana. The company had expanded its services in the period from 1950 to 1959 and spent a total amount of \$189,192,603.00 during that time for construction of additional facilities and improvements. A total of 6,619 miles of power lines of all voltages was in service throughout the Island at the end of 1959.

The claimant operated two electrical systems in Cuba, the Western System and the Eastern System. The Western System was the larger and included the City of Havana. Its generating stations were:

Consolidated Steam Electric Station on Havana Bay in Havana,

Regla Steam Electric Station in the Community of Regla,
 Rincon de Melones Steam-Diesel Electric Station on Havana Bay,
 Matanzas Steam Electric Station on Matanzas Bay,
 O'Bourke Steam Electric Station on Cienfuegos Bay,
 Cienfuegos Steam Electric Station in the City of Cienfuegos,
 Ciego de Avila Diesel Electric Station, sixty miles west of Camaguey,
 Vicente Steam Electric Station, six miles east of Ciego de Avila, and
 Camaguey Steam Electric Station at Camaguey.

The Western System also had substations at Naranjito, Colon, Diezmero, Principe, Rincon, San Augustin, Santa Clara, and Tropical.

The Eastern System was centered around Santiago and its generating stations were:

Santiago Steam Electric Station on Santiago Bay,
 Manzanilla Diesel Electric Station, 100 miles west of Santiago, and
 Guaso Hydro Electric Station, 50 miles northeast of Santiago.

On the outskirts of Havana, on Rancho Boyeros Highway, claimant owned the Capdevila Service Center, which contained the general offices of the claimant, a garage, electric meter shop, gas meter shop, transformer, mechanical and carpentry shops, central warehouse and stores. It also owned nine mobile power units and approximately 425 trucks and jeeps.

The Havana Gas System which sold manufactured gas in the City of Havana consisted of a generating plant, storage capacity, street boosters and a distribution system. The distribution system had 230 miles of mains and served approximately 55,000 customers.

On August 6, 1960, the Government of Cuba issued Resolution No. 1 which listed as nationalized the CUBAN ELECTRIC COMPANY (Compania Cubana de Electricidad), pursuant to Law 851 of July 6, 1960. The Commission therefore finds that claimant's properties in Cuba were nationalized on August 6, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claim is made herein for losses sustained by CUBAN ELECTRIC COMPANY as follows:

1. Utility Plant	\$285,266,482.00
2. Investments in Cuba	1,957,756.40
3. Current Assets	30,244,140.00
4. Deferred Debits	2,364,413.00
5. Liability to Suppliers	499,186.69
6. Loss on Sale of Equipment & Supplies	1,054,746.22
7. Unsold Equipment	1,083,868.17
8. Preservation of Assets	185,297.00
9. Resettlement of Employees	314,866.90
10. Funding Retirement Plan	599,663.00
Total	\$323,570,419.38

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 mission of the Commission is 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.

In support of the claim, claimant has submitted a copy of its Annual Report for the year ending December 31, 1959, a Financial Report with a balance sheet for February 29, 1960, copies of records concerning inventories of equipment purchases, sales, investments and supplies, and affidavits of former employees of claimant and the American & Foreign Power Company Inc. The record also contains copies of balance sheets for 1957 and 1958, a report of the Cuban Rate Investigation Commission, and claimant's memorandum concerning the 1959 rates and report of that Commission.

1. UTILITY PLANT

Under the heading "Utility Plant", claimant makes claim for all land, buildings, machinery, vehicles, equipment and construction work in progress. The amount claimed, \$285,266,482.00, is the adjusted book value of the plant for August 6, 1960, the date of nationalization. According to the latest balance sheet submitted, the value of the plant on February 29, 1960, was \$345,687,423.00. In order to arrive at the claimed amount of \$285,266,482.00, a depreciation reserve of \$52,337,238.00 was deducted and further adjustments were made for charges incurred and credits taken in the period from February 29, 1960 to August 6, 1960. The Commission finds that this method of arriving at the total claimed is fair and equitable and is supported by a preponderance of the evidence in the record, even though there is included in the evidence a report of the Cuban Rate Investigation Commission which had been appointed by the Castro Government in Cuba to determine electric and gas rates for CUBAN ELECTRIC COMPANY. That body made a finding as to the value of claimant's property for a rate base. This, however, is not a determination of the market value of the company but was an attempt to put as low a value as possible on the assets as a basis for lowering utility rates.

The Commission therefore finds that the value of the Utility Plant on August 6, 1960 is the adjusted book value of \$285,266,482.00.

2. INTANGIBLES

Claimant asserts a loss in the amount of \$1,957,756.00 for "investments in Cuba." This item, comprising certain debts and advances as well as investments, is carried at book value in the balance sheet of February 29, 1960 in the amount of 2,173,290.70. The claim as presented is for the asserted value of the items, as follows:

1. Vedado Tennis Club Mortgage Bonds	\$	5,000.00
2. Country Club de Santiago Stock		500.00
3. Camaguey Country Club Bonds		500.00
4. Compania de Publicacion "El Dia" Bonds		5,000.00
5. City of Matanzas—8% Gold Bonds		3,226.82
" " " " " " "		727.73
6. Julio Cesar Hidalgo & Cia. Stock		100.00
7. Havana Biltmore Yacht & Country Club Series A Stock		1,000.00
" " " " " " "		1,000.00
8. Gremio de Obreros y Mareantes—Advances		10.00

9. Acueducto de Santa Maria—Debt	371.84
10. Autobuses Modelo, S.A.—Preferred Shares	72,000.00
11. Cooperativa de Repartos Electricos—Advances	122,094.26
12. Ministerio de Comunicaciones—Bandes Bonds	1,000.00
13. Advances to Employees	789,519.00
14. Financiera Nacional de Cuba Stock	2,000.00
15. Ferrocarriles Occidentales de Cuba Stock Series B	102,400.00
16. Debt of Cuban Government	1,721,395.70
17. Land, "La Puntilla"	100,101.45
18. Cia. Inmobiliaria "La Torre, S.A." Stock	4,000.00
19. Ministerio de Educacion, Bonds	12,500.00
20. Veteranos, Tribunales y Obras 4% Bonds	89,500.00
21. Bandes 4%, Total Bonds	112,500.00
22. Compania Financiera de Transporte—Debt	144,000.00
Total	\$3,290,446.80

Claimant states that the Cuban Government obtained physical possession of all the securities and evidences of title for the above listed item. The Commission finds that claimant was the owner of these assets, and, on the basis of the evidence of record and other evidence available to the Commission, that the loss suffered by claimant in this regard is the amount set forth above with the following exceptions:

- (a) Havana Biltmore Yacht and Country Club Series A stock which has been determined to have the value of \$3,500.00 per share in the *Claim of Arman E. Becker, Jr.*, Claim No. CU-1094. Thus the loss for two shares of such stock is \$7,000.00.
- (b) Ferrocarriles Occidentales de Cuba Series B stock which is determined to have a value of \$20,479.85. This was the amount stated by claimant in its balance sheet of February 29, 1960 to have been the market value of such securities. This figure is adopted by the Commission rather than the \$102,400.00 set forth above. This company was a mixed-economy corporation whose shares were owned by the Cuban Government as well as private interests. Certain taxes were forgiven its shareholders.
- (c) Debt of the Cuban Government in the amount of \$1,721,395.70 which represents a sum due prior to 1948 is deducted. Inasmuch as this debt did not arise after January 1, 1959, claim for this item must be denied.

The Commission has previously determined the values for Financiera Nacional de Cuba stock, Bandes Bonds, Veteranos, Tribunales y Obras 4% Bonds and Cia. Inmobiliaria "La Torre, S.A." stock, to be the same as those claimed herein. Compania Financiera de Transporte which owed \$144,000.00 to the claimant was nationalized on August 29, 1960 and that sum would therefore be certified as a debt of a nationalized enterprise. The remaining items are determined by the Commission to have the values stated above.

Accordingly, the Commission finds that the aggregate value of the loss sustained by claimant for these intangibles on August 6, 1960 was \$1,492,130.95.

3. CURRENT ASSETS

According to the February 29, 1960 Balance Sheet, Current Assets amounted to \$31,839,173.00. Since claimant operated its business until August 6, 1960, the date of loss, it is necessary that the amount be adjusted to

On the basis of the record the Commission finds the Current Assets on August 6, 1960 to have been as follows:

Cash		\$ 1,075,757.00	
Special Deposits		7,348.00	
Working Funds		593,914.00	
Accounts Receivable			
General	\$ 7,425,270.00		
Municipal & Other Government	15,252,197.00		
Miscellaneous	1,812,197.00	24,489,721.00	
Interest & Dividends Receivable		2,530.00	
Materials & Supplies		3,545,473.00	
Prepayments		529,397.00	
	Total		\$30,244,140.00

4. DEFERRED DEBITS

Claim is made for the amount of \$2,364,413.00 for deferred debits, comprising unamortized expenses incurred in connection with debt and stock issues for the printing of indentures, engraving, notarial and registration fees in Cuba and Cuban revenue stamps.

On the basis of the record, the Commission finds that claimant sustained a loss in the amount of \$2,364,413.00 for deferred debits.

5. OTHER ASSERTED LOSSES

Claimant has further asserted claim in the aggregate amount of \$3,737,-627.98 for losses entitled Liability to Suppliers, Loss on Sale of Equipment and Supplies, Unsold Equipment, Preservation of Assets, Resettlement of Employees, and Funding Retirement Plan. The record shows that at the time of the taking of its properties in Cuba, claimant had in hand in the United States or on order certain types of equipment built specifically for use in Cuba. Because of the taking, claimant cancelled many orders and continued to hold those items which had been completed in storage in the United States. Claimant has continuously tried to dispose of the new equipment but because of the particular design and engineering several of the pieces are still in claimant's possession. One sale was made as late as September, 1968 in claimant's endeavor to reduce its losses. In addition to the monetary loss for the equipment purchased, claimant incurred and continues to incur the expense of warehousing, shipping, and insuring the equipment in its possession in the United States.

Concerning the resettlement of employees and the retirement plan, claimant asserts that it was required to make payment to its former employees in 1960, 1961, 1962 and 1963 in the form of severance payments and other forms of assistance and to make annual payments in the form of supplemental pensions to retired employees and dependents. The amount of pension was increased also because the pensioners were not paid any benefits formerly received from the Cuban Government for Social Security and claimant made up the difference. Claimant borrowed the necessary funds for these auxiliary payment from its parent company. There is no evidence of record that any of the payments to employees was for property taken or losses sustained as a result of actions by the Government of Cuba.

In considering these portions of the claim, the Commission must determine whether such losses are certifiable under Title V of the Act.

Section 501 of the Act states:

It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba which have arisen since January 1, 1959, out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, . . .

This Section and Section 503(a) of the Act, *supra*, both refer to losses from the taking of property. The record is clear that claimant has sustained these losses for machinery and equipment ordered but not delivered to its Cuban locations and for the treatment of its employees by the Cuban Government. The basis, however, of these two parts of the claim is not for property taken by the Government of Cuba but for losses resulting indirectly from other actions of the Government. The Commission, therefore, finds that these losses are not within the purview of Title V of the Act. Accordingly these portions of the claim are denied.

The Commission consequently finds that the value of the nationalized assets of CUBAN ELECTRIC COMPANY on August 6, 1960 were:

Plant	\$285,266,482.00
Intangibles	1,492,130.95
Current Assets	30,244,140.00
Deferred Debits	2,364,413.00
Total	\$319,367,165.95

6. DEDUCTIONS

The record shows that claimant was indebted to the Cuban Government and its agencies for taxes in the amount of \$2,865,397.00 and for liabilities under the Labor Laws for Employees Sickness Fund in the amount of \$322,142.00. According to the balance sheets, claimant was also indebted to the Financiera Nacional de Cuba in the amount of \$37,920,000.00.

The Commission has held in the *Claim of Phoenix Insurance Company*, Claim No. CU-1913, that Financiera Nacional de Cuba was a semi-public entity controlled by the National Bank of Cuba, an agency of the Government of Cuba. Inasmuch as the debt to the Financiera Nacional de Cuba is actually a debt to the Government of Cuba, claimant's liability for taxes and the above-mentioned debt in the total amount of \$41,107,539.00 must be deducted under the theory of set-off. (See *Claim of Simmons Company*, Claim No. CU-2303.)

The Commission has previously certified a loss in the amount of \$11,745,-959.55 to the Boise Cascade Corporation, formerly Ebasco Industries, Claim No. CU-3548, for the loss of certain bonds secured by mortgages on properties of the CUBAN ELECTRIC COMPANY in Cuba. Consequently, \$11,745,-959.55 must also be deducted from the asserted loss claimed herein.

Accordingly, the Commission finds that the losses sustained by CUBAN ELECTRIC COMPANY as a result of the nationalization of its assets by the Government of Cuba on August 6, 1960 amounted to \$266,513,667.40.

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 claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CUBAN ELECTRIC COMPANY sustained a loss as a result of actions by 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 Sixty-six Million Five Hundred Thirteen Thousand Six Hundred Seventy-seven Dollars and Forty Cents (\$266,513,667.40) with interest at 6% per annum from August 6, 1960 to the date of settlement. Dated at Washington D.C., October 21, 1969

IN THE MATTER OF THE CLAIM OF FREDERICK SNARE CORPORATION,
ET AL.

Claim No. CU-2035—Decision No. CU-3602

Losses based on improvements to leaseholds taken by Cuba, which leaseholds enhanced the value of the business operations in Cuba, are within the purview of Title V of the Act.

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 \$1,972,487.26, was presented by FREDERICK SNARE CORPORATION, based upon asserted losses in connection with its branch office in Havana, Cuba and two wholly-owned subsidiaries, FREDERICK SNARE OVERSEAS CORPORATION and Constructora Snare, S.A.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the

* This decision was entered as the Commission's Final Decision on May 14, 1969.

United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that FREDERICK SNARE CORPORATION, hereafter referred to as the parent, was organized under the laws of New York, and owned all of the outstanding capital stock of FREDERICK SNARE OVERSEAS CORPORATION, hereafter referred to as OVERSEAS, which was organized under the laws of Delaware, as well as all of the outstanding capital stock of Constructora Snare, S.A., hereafter referred to as the Cuban subsidiary, which was organized under the laws of Cuba. An authorized officer of the parent has certified that more than 50% of the parent's outstanding capital stock was owned by nationals of the United States at all pertinent times, and that as of August 10, 1967, 1.63% of the parent's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that the parent and OVERSEAS are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides, *inter alia*, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered. Since the parent's claim is based in part upon its 100% ownership interest in OVERSEAS, a national of the United States, that part of its claim is denied. (See *Claim of Mary F. Sonnenberg*, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 (July-Dec. 1966).) OVERSEAS, however, has been added as party claimant with respect to that part of the original claim.

The Commission finds on the basis of the evidence of record that the parent owned a branch office and a Cuban subsidiary; that OVERSEAS owned a branch office in Cuba; and that claimants owned at said branches and Cuban subsidiary various items of personal property, discussed in detail below, which were used in construction work in Cuba.

The record shows and the Commission finds that the branch offices of the parent and OVERSEAS, as well as the Cuban subsidiary owned by the parent, were all intervened on October 7, 1960 by Resolution 21632 of the Cuban Ministry of Labor, issued pursuant to Law 647 of November 24, 1959. The Commission, therefore, concludes that the parent and OVERSEAS sustained losses of property on October 7, 1960, except as noted below, within the meaning of Title V of the Act.

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.

The evidence includes copies of the general ledger trial balance sheets for the branch office of the parent as of August 31, 1960, for the branch office

of OVERSEAS as of May 31, 1960, and a copy of the trial balance sheet of the Cuban subsidiary as of December 31, 1959, which were the latest statements received by the parent from Cuba; balance sheets as of December 31, 1960 and supporting schedules for the parents and OVERSEAS, showing *inter alia*, their respective properties in Cuba, including the Cuban subsidiary; copies of invoices, evidencing the purchase of some of the machinery and equipment involved in the parent's claim; statements from employees and officials showing the dates of acquisition of some of the other items of machinery and equipment for which claim was made; copies of pertinent parts of the parent's consolidated Federal tax return for 1960; copies of extracts from the parent's books and records relating to this claim; as well as detailed appraisals for all of the machinery and equipment maintained at the two branch offices and the Cuban subsidiary, supported by detailed schedules and current invoices showing replacement costs for new machinery and equipment. The appraisals, prepared by an expert who had personal knowledge of the facts on the basis of his position as Manager of the parent's operations in Cuba, indicate that appropriate reductions were made for depreciation to arrive at values on the date of loss.

On the basis of the foregoing, claimants have computed their claim as follows as of October 7, 1960 (it is noted that the Cuban peso was on a par with the United States dollar):

CONSTRUCTORA SNARE, S.A. (CUBAN SUBSIDIARY)

<i>Assets</i>	
One 180' Steel Boom	\$ 250.00
One 40' Steel A-Frame	500.00
One 3 Drum Hoist	500.00
One 2 Drum Hoist	250.00
One 70 H.P. Boiler	250.00
One 4" Duplex Pump	250.00
One 1" Duplex Pump Boiler Feed	50.00
Launch "Amelia"	2,000.00
Boat Queen Mary	260.00
Derrick Boat F.S.C. #41	40,000.00
Total	\$ <u>44,322.00</u>

PARENT'S BRANCH OFFICE

<i>Assets</i>	
Cash in Banks	\$ 286,359.43
Petty Cash Fund	1,000.00
Accounts Receivable	208,023.46
Deposits	2,810.39
Securities	87,360.00
Prepaid and Deferred Charges	3,327.27
Improvements to leaseholds	14,232.49
Construction equipment	1,071,486.00
Furniture & Fixtures	47,048.22
Materials	13,613.71
Steel Sheet Piling	4,508.00
Total Assets	\$ <u>1,739,768.97</u>

Liabilities

Accounts Payable	\$	2,631.96
Compulsory Vacations Payable		9,388.79
Unclaimed Wages		2,205.99
Income Taxes Payable—Withheld from Employees		2,059.04
Taxes Payable—Withheld from Subcontractors		1,311.42
Social Benefits Taxes Payable		584.13
		<hr/>
	Total Liabilities	\$ 18,181.33
		<hr/>
Net Worth		\$1,721,587.64
		<hr/> <hr/>

Consequently, the parent's claim is in the aggregate amount of \$1,765,909.64.

OVERSEAS BRANCH OFFICE

Assets

Cash in Banks	\$128,778.02	
Accounts Receivable	78,865.35	
Organization Expenses	1,307.97	
	<hr/>	
Total Assets		\$208,951.34

Liabilities

Accounts Payable	265.52	
Compulsory Vacations Payable	709.92	
Unclaimed Wages	1,398.28	
	<hr/>	
Total Liabilities		2,373.72
		<hr/>
Net Worth		\$206,507.62
		<hr/> <hr/>

The foregoing amount, \$206,507.62, therefore, represents the amount claimed by OVERSEAS.

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the machinery and equipment and equitable to the claimant is that shown in the expert appraisals with certain adjustments discussed below in detail together with the valuations for the other items in this claim.

It is noted that apart from the Cuban subsidiary, the parent and OVERSEAS merely carried on their construction business through branch offices. Thus with respect to these two branch offices, we are not dealing with the nationalization of Cuban corporations, in which case all liabilities thereof would have to be considered. Accordingly, the Commission consistently has not reduced the value of a corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for taxes owing to the Republic of Cuba which the Commission concluded was appropriate on the theory of set-off. (See *Claim of Simmons Company*, Claim No. CU-2303.)

For the foregoing reasons, the Commission finds no valid ground for reducing the values of the assets of either of the branch offices by any liabilities except for taxes payable to Cuba. On the other hand, the value or net worth of the Cuban subsidiary must include consideration of all its liabilities on the date of loss, because it was a Cuban corporation.

VALUATION OF THE CUBAN SUBSIDIARY

A copy of the Cuban subsidiary's balance sheet as of December 31, 1959 was included in a statement of August 17, 1967 by an authorized officer of the

parent, who stated in his letter of August 9, 1968 that it was the latest statement received from Cuba. That balance sheet shows the following:

<i>Assets</i>	
Construction Equipment	\$19,195.52
Less depreciation	5,017.82
Net Construction Equipment	<u>\$14,177.70</u>
FREDERICK SNARE CORPORATION (Account Receivable)	12,495.17
Deferred Charges	7.38
Total Assets	<u><u>\$26,680.25</u></u>
<i>Liabilities and Capital</i>	
Dividend Tax Payable	\$ 346.33
Capital Stock—Common	25,000.00
Surplus	1,333.92
	<u><u>\$26,680.25</u></u>

As stated above, the Commission found that the appraisals of the machinery and equipment best reflected the values thereof on the date of loss. It is noted that the parent has eliminated from the assets of the Cuban subsidiary the account receivable which it owed its Cuban subsidiary in the amount of \$12,495.17. It has also excluded deferred charges (prepaid expenses) in the amount of \$7.38, apparently because it was deemed to have been used up as of the date of loss which was more than 9 months later than the date of the balance sheet. The Commission finds the elimination of the debt the parent owed its Cuban subsidiary a proper deduction and agrees that the deferred charges in the negligible amount of \$7.38 should likewise be eliminated. On the other hand, however, the Commission finds that the Cuban subsidiary's liability in the amount of \$346.33, for taxes payable to Cuba, the only liability of the Cuban subsidiary, should be deducted in the absence of evidence that it was paid to Cuba. (See *Simmons* claim, *supra*.)

Accordingly, the Commission finds that the value or net worth of the Cuban subsidiary on the date of loss was as follows:

<i>Assets</i>	
Construction Equipment (appraised value)	\$44,322.00
<i>Liabilities</i>	
Dividend Tax Payable	346.33
Net Worth	<u><u>\$43,975.67</u></u>

VALUATION OF THE PARENT'S BRANCH OFFICE

The evidence establishes that the asset, Cash in Banks, was shown in the bank statements of August 31, 1960 as \$301,509.25. The parent's records, however, disclose transactions and adjustments between September 1, 1960 and October 6, 1960, so that the cash in the bank as of October 7, 1960 was reduced to \$286,359.43. The Commission, therefore, finds that on October 7, 1960, the date of loss, the balance of the bank deposits in favor of the branch was \$286,359.43.

The Commission finds that on October 7, 1960, the date of loss, the

amount of cash on hand at the branch office was \$1,000.00, as evidenced by the record.

With respect to the schedule of accounts receivable of the branch office in the amount of \$208,023.46, the record shows that some of the debtors were American nationals. Pursuant to Section 505(a) of the Act, debts due from American concerns may not be allowed unless they constituted charges on property nationalized, expropriated, intervened, or taken by the Government of Cuba. (See *Claim of Anaconda American Brass Company*, Claim No. CU-0112, 1967 FCSC Ann. 60.) The Commission finds, in the absence of evidence to the contrary, that the following debts due the branch office from American concerns or the United States Government were not charges upon property within the meaning of Section 505(a) of the Act and, accordingly, must be deducted in determining the amount of the branch's accounts receivable on October 7, 1960:

Compania Cubana de Electricidad (Cuban Electric Company)	\$ 8,961.67
DuPont Interamerica Chemical Co.	1,120.71
Freeport Sulphur Co.	3,952.86
General Services Administration (United States Government)	896.80
University of Chicago	2,133.26
Merritt-Chapman & Scott Co.	474.09
Total debts for Americans	<u>\$17,539.39</u>

The Commission, therefore, finds that on October 7, 1960, the date of loss, the aggregate amount of accounts receivable owned by the branch, which constituted a loss within the meaning of Title V of the Act was \$190,484.07.

With respect to the schedule of deposits of the branch office, the Commission finds that the amount of \$60.00 constituted an unsecured debt of the Cuban Electric Company, which must be deducted for the reasons stated in connection with the accounts receivable. (See *Anaconda* claim, *supra*.) Accordingly, the Commission finds that on October 7, 1960, the branch office owned deposits in the amount of \$2,750.39.

On the basis of the evidence of record, the Commission finds that on October 7, 1960, the date of loss, the aggregate values of the branch office's deferred charges, furniture and fixtures, materials, and steel sheet piling were the amounts of \$3,327.27, \$47,048.22, \$13,613.71, and \$4,508.00, respectively.

The Commission finds that the item Improvements to Leaseholds, constituted investments which enhanced the value of the branch's business in Cuba. Accordingly, the Commission finds that on October 7, 1960, the value of the improvements to leaseholds was \$14,232.49.

As stated above, the Commission has found that the value of the construction equipment at the branch office should be measured by the expert appraisals. The Commission, therefore, finds that the aggregate value of such construction equipment on October 7, 1960 was \$1,071,486.00.

The only remaining asset of the branch office was securities for which the amount of \$87,360.00 is being claimed. The record shows that these securities included \$25,900.00 for 5% First Mortgage Bonds of the Cuban Electric Company, due 1980; \$2,500.00 for 5% First Mortgage Bonds of the Cuban Electric Company, due 1987; \$1,960.00 for 5% Republic of Cuba Internal Debt Bonds of 1905, for which the face amount was \$2,000.00; \$50,000.00 for 4½% Cuban Government Bonds of the Tunnel of Havana, due 1980; \$5,000.00 for 50 shares of stock of Financiera Nacional de Cuba with a face value of

\$100.00 for each share; \$1,000.00 for a bond of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1958; and \$1,000.00 for the par value of one share of stock of *Compania Inmobiliaria La Torre*, a Cuban corporation.

This is the first claim involving 5% Mortgage Bonds of the Cuban Electric Company. The Commission notes that other claims have been filed by other holders of such bonds; thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that on October 7, 1960, the date of loss, the aggregate value of the 5% Mortgage Bonds of the Cuban Electric Company was \$28,400.00, the face amount of the bonds.

With respect to the Republic of Cuba 5% Internal Debt Bonds of 1905, and the 4½% Cuban Government Bonds of the Tunnel of Havana, the Commission finds, in the absence of evidence to the contrary, that on October 7, 1960, the Government of Cuba was indebted to the parent's branch in the amounts of \$2,000.00 and \$50,000.00, respectively.

The Commission has found that *Financiera Nacional de Cuba* was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba; and that Cuba had guaranteed the investment of stockholders of this entity. The Commission further found that pursuant to Law 865 of August 17, 1960, *Financiera Nacional de Cuba* was liquidated; that all of its liabilities were assumed by the Government of Cuba; and that a claim for such loss arose on August 17, 1960, the date of liquidation, within the meaning of Title V of the Act. (See *Claim of Phoenix Insurance Company*, Claim No. CU-1913.) The Commission finds that on August 17, 1960, the amount of the unpaid indebtedness of the Government of Cuba with respect to the said 50 shares of stock of *Financiera Nacional de Cuba* was \$5,000.00.

The Commission has found, with respect to the \$1,000.00 bond of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, that the Government of Cuba first defaulted on the payment of interest on May 1, 1961, Cuba having paid the interest due as of November 1, 1960. (See *Claim of Westchester Fire Insurance Company*, Claim No. CU-1703.) Consequently, the Commission finds that on October 7, 1960, the date of loss, the Government of Cuba was indebted to the parent's branch in the amount of \$1,000.00.

It has been noticed above that since this was a branch office and not a legal entity in Cuba, no deductions would be made for any of the branch's liabilities except for taxes due to Government of Cuba. The records of the parent disclose that as of October 7, 1960, the branch was indebted to Cuba for taxes in the aggregate amount of \$3,954.59. Accordingly, the Commission concludes that the losses sustained at the branch office should be reduced to that extent.

The losses sustained by the parent may be summarized as follows:

<i>Item</i>	<i>Date of loss</i>	<i>Amount</i>
Subsidiary	October 7, 1960	\$ 43,975.67
Branch Office:		
Cash in banks	October 7, 1960	286,359.43
Cash on hand	October 7, 1960	1,000.00
Accounts receivable	October 7, 1960	190,484.07

<i>Item</i>	<i>Date of loss</i>	<i>Amount</i>
Deposits	October 7, 1960	2,750.39
Deferred charges	October 7, 1960	3,327.27
Furniture and fixtures	October 7, 1960	47,048.22
Materials	October 7, 1960	13,613.71
Steel sheet piling	October 7, 1960	4,508.00
Improvements to leaseholds	October 7, 1960	14,232.49
Construction equipment	October 7, 1960	1,071,486.00
Mortgage bonds of Cuban Electric Company	October 7, 1970	28,400.00
Cuban Government 5% Internal Debt Bonds of 1905	October 7, 1960	2,000.00
Cuban Government 4½% Bonds of the Tunnel of Havana	October 7, 1960	50,000.00
Financiera Nacional de Cuba	August 17, 1960	5,000.00
Cuban Government 4% Veterans, Courts and Public Works Bonds, 1953-1983	October 7, 1960	1,000.00
One share of stock of Compania Inmobiliaria La Torre	October 7, 1960	1,000.00
Total losses of parent		\$1,766,185.25
Less taxes payable to Cuba		3,954.59
Net loss of the parent		<u>\$1,762,230.66</u>

VALUATION OF OVERSEAS' BRANCH OFFICE

The evidence establishes that the asset, Cash in Banks, was shown in the bank statements of May 31, 1960 as \$153,538.07. The records of OVERSEAS, however, disclose transactions and adjustments between June 1, 1960 and October 7, 1960, so that the cash in the bank as of October 7, 1960 was \$128,778.02. The Commission, therefore, finds that on October 7, 1960, the date of loss, the balance of the bank deposits in favor of the branch was \$128,778.02.

The record shows that all of the accounts receivable of the branch office of OVERSEAS were due from Moa Bay Mining Company, a national of the United States within the meaning of Section 502(1)(B) of the Act, as stated by an authorized officer of the parent in an affidavit, dated August 9, 1968. It does not appear from the evidence of record that this debt was a charge on property taken by Cuba within the meaning of Section 505(a) of the Act. For the reasons stated with respect to the accounts receivable and deposits of the parent's branch office, this portion of the claim in the amount of \$78,865.35 must be and hereby is denied. (See *Anaconda* claim, *supra*.)

The Commission finds that the item, Organization Expenses, constituted investments which enhanced the branch's business in Cuba. Accordingly, the Commission finds that on October 7, 1960, the date of loss, this item was an asset, having a value of \$1,307.97.

Inasmuch as it does not appear from the evidence of record that the branch office owed any debt to Cuba, no deductions are being made for the liabilities of the branch, as in the case of the parent's branch office.

The Commission, therefore, finds that the value of the branch office of OVERSEAS on October 7, 1960, the date of loss, was \$130,085.99.

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 respective dates 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:

FREDERICK SNARE CORPORATION

From	On
August 17, 1960	\$ 5,000.00
October 7, 1960	1,757,230.66
Total	<u>\$1,762,230.66</u>

FREDERICK SNARE OVERSEAS CORPORATION

From	On
October 7, 1960	<u>\$ 130,085.99</u>

CERTIFICATION OF LOSS

The Commission certifies that FREDERICK SNARE CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claim Settlement Act of 1949, as amended, in the amount of One Million Seven Hundred Sixty-Two Thousand Two Hundred Thirty Dollars and Sixty-six Cents (\$1,762,230.66) with interest at 6% per annum from the respective dates of loss to the date of settlement; and,

The Commission certifies that FREDERICK SNARE OVERSEAS CORPORATION 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 Thirty Thousand Eighty-five Dollars and Ninety-nine Cents (\$130,085.99) with interest at 6% per annum from October 7, 1960 to the date of settlement.

Dated at Washington, D.C. Apr. 16, 1969

IN THE MATTER OF THE CLAIM OF FORD MOTOR COMPANY

Claim No. CU-3072—Decision No. CU-4015

Claims based on contingent losses which were not actually sustained are outside the purview of Title V of the Act.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$2,138,024.42, was presented by FORD MOTOR COMPANY, based upon the asserted loss of a stock interest in *Creditos y Descuentos Mercantiles, S.A.*, a Cuban corporation, unrealized profits, loss of personal property and a contingent loss under guarantees extended to banks in connection with loans made by such banks to the Cuban corporation mentioned.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware. The record shows that at all times pertinent to this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals.

Claimant states that 1 (one) percent of its stockholder interest is presumed to be owned by non-nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

STOCK OF INTEREST IN CREDESCO

The evidence establishes and the Commission finds that claimant, the FORD MOTOR COMPANY, owned a 100% stock interest in *Creditos y Descuentos Mercantiles, S.A.*, hereafter referred to as CREDESCO, a corporation organized under the laws of Cuba.

On October 24, 1960 the Government of Cuba published in its Official Gazette Resolution 3 (pursuant to Law 851), which listed CREDESCO as nationalized, and the Commission finds that it was nationalized on that date within the meaning of Title V of the Act.

Since CREDESCO was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

The record includes copies of a balance sheet and profit and loss statement for CREDESCO as of August 31, 1960, detailed schedules for the individual items included in such financial statements, and a copy of an insurance policy under which CREDESCO's office furniture and equipment was insured on September 3, 1959.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet of August 31, 1960, which reflects the following, the peso being on a par with the United States dollar:

ASSETS

Cash		\$ 13,281.41
Notes Receivable		2,378,088.06
Accounts Receivable:		
Wholesale Interest and Insurance Charges	\$177,643.49	
Other Dealer Receivable	70,699.90	
Other Sundry	(3,616.43)	
Branches and Affiliated Companies	47,287.70	
Total Accounts Receivable	\$292,014.66	
Less: Reserve for Doubtful Notes and Accounts	228,600.03	
Net Accounts Receivable		63,414.63
Inventories:		
Company Cars Less Reserve for Depreciation		22,325.13
Prepaid Expenses		1,686.86
Total Current Assets		\$2,478,796.09
Investments: Banco Nacional de Cuba		12,500.00
Real Estate, Plant and Equipment	\$ 29,628.88	
Less Reserves for Depreciation	15,406.81	
Net Fixed Assets		14,222.07
Total Assets		\$2,505,518.16

LIABILITIES

Bank Liabilities		1,850,000.00
Total Accounts Payable		233,254.50
Accrued Liabilities:		
Vacations and Holidays	10,214.19	
Sundry	600.00	
Deferred Income, Unearned Charges (Retail)	195,115.35	
		205,929.54
Total Current Liabilities		\$2,289,184.04

Capital:	
Capital Stock	\$250,000.00
Earnings Retained	15,621.36
Loss, Current Year	<u>(49,287.24)</u>
Total Capital	216,334.12
Total Liabilities and Capital	<u>\$2,505,518.16</u>

The balance sheet of August 31, 1960 indicates that the net worth of CREDESCO or the excess of its assets over its liabilities on such date was \$216,334.12.

The CREDESCO balance sheet of August 31, 1960, however, also reflects that one of the assets was an account receivable due from claimant (Ford International Division) in the amount of \$47,287.70. Since such unpaid debt does not represent a loss for the claimant, the Commission finds that the amount of the debt or \$47,287.70 should be deducted from the net worth of CREDESCO, resulting in an adjusted net worth of \$169,046.42. Accordingly, the Commission finds that on October 24, 1960 claimant sustained a loss within the meaning of *Tithee V* of the Act in connection with its ownership of CREDESCO in the amount of \$169,046.42.

LOSS OF PROFIT

A portion of the claim is based upon estimated lost profit of CREDESCO for the period from January 1, 1959 to September 30, 1960. The amount of \$39,274.58 claimed for lost profit was calculated upon the average profits assertedly realized by CREDESCO for the calendar years of 1956, 1957 and 1958.

The authority of the Commission in these cases is limited by Section 503(a) Title V to claims which arose after January 1, 1959, "resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property . . . by the Government of Cuba".

A claim for the loss of profits under the statute therefore must be supported by evidence which brings it within the above-quoted provision. The nationalization of CREDESCO on October 24, 1960, in and of itself is not proof of loss of profits for the period prior to the date of nationalization. No other evidence to support a finding that the loss of profits was caused by any action by the Government of Cuba within the purview of the statute was submitted.

The claim for loss of profits may be construed as a claim for the going-concern value of the corporation CREDESCO. However, CREDESCO was mainly a finance corporation closely affiliated with the financing of the sale of claimant's products only. For that reason it does not appear that CREDESCO had an independent going-concern value distinct and separate from the claimant's sales operation in Cuba. In view of the foregoing, the portion of the claim which is based upon the loss of profits must be and is hereby denied.

CONTINGENT LOSS UNDER GUARANTEE

It is stated by claimant that it guaranteed the repayment of loans granted to CREDESCO in the total amount of 1,775,000 pesos by six financial institutions, which were The First National City Bank of New York; Banco Gelats (Havana); First National Bank of Boston; The Chase Manhattan Bank; The Royal Bank of Canada; and the Bank of Nova Scotia. A portion

of the claim, entitled "provisional claim", is based upon such guarantee and is predicated upon the assumption that in the event payment should be made by claimant under the guarantee, CREDESCO would become indebted to claimant. Claimant explicitly denies liability for any obligation under the guarantee in question and states that it has, as yet, sustained no loss.

Section 501 of Title V of the Act makes it clear that the purpose of that title is to provide for the determination of amount and validity of claims which "have arisen since January 1, 1959." The Act does not provide for the determination of contingent losses or losses which were not sustained by the claimant. Moreover, in view of the nine years which elapsed since the taking of CREDESCO by the Government of Cuba, it appears that any action under the guarantee would be barred by the statute of limitations. In view of the foregoing, the portion of the claim which is based upon a contingent loss in the amount of \$1,775,000.00 must be and it is, hereby denied.

OTHER PERSONAL PROPERTY OWNED BY CLAIMANT

A contemporary memorandum and other official statements of claimant show, and the Commission finds that claimant (specifically, its Ford International Overseas Distributors and Export Supply Operations) owned machinery and office equipment and a 1959 Edsel passenger car. The Commission also find that such personal property was taken by the Government of Cuba on October 24, 1960 in connection with the nationalization of claimant's wholly owned subsidiary, CREDESCO. Accordingly, the Commission finds that claimant sustained an additional loss in this respect within the meaning of Title V of the Act in the aggregate amount of \$4,897.00.

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 the FORD MOTOR COMPANY sustained 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 Seventy-three Thousand Nine Hundred Forty-three Dollars and Forty-two Cents (\$173,943.42) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement. Dated at Washington, D.C., Oct. 8, 1969.

FINAL DECISION

Under date of October 8, 1969, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$173,943.42, representing \$169,046.42 for a wholly owned Cuban subsidiary called Credesco, and \$4,897.00 for other personal property. Portion of the claim based upon the asserted loss of profit and a contingent loss were denied because the record did not establish that the asserted losses were within the purview of the Act. Claimant objected only to the denial of the claim for loss of profit, and submitted a memorandum in support of the objections.

Claimant contends that during the period January 1, 1959 when Castro came into power to September 30, 1960 Cuba's nationalization policies caused

economic hardships to Credesco's customers thereby resulting in a loss of profit to Credesco. The asserted amount of loss is \$39,274.58, computed on the basis of Credesco's average net earnings for the calendar years 1956, 1957 and 1958. It is stated that the loss in this respect is evidenced by a sharp decline in Credesco's net worth after January 1, 1959, and losses from operations.

Upon consideration of claimants' objections in light of the entire record, the Commission is constrained to reject claimant's contentions. While it may be that Cuba's actions adversely affected Credesco and its customers, they also affected other persons and concerns in Cuba.

The Commission finds that claimant's losses, if any, in this respect were the indirect result of Cuba's actions directly affecting other persons and concerns. The Commission has consistently held that claims for indirect or incidental losses are not within the purview of Title V of the Act. (See *Claim of Cuban Electric Company*, Claim No. CU-2578; and *Claims of Texaco, Inc. incorporated, et al*; Claim Nos. CU-1331, CU-1332 and CU-1333.)

Accordingly, the Commission finds no valid basis for altering the decision previously entered. Therefore the Proposed Decision of October 8, 1969 is affirmed in all respects.

Dated at Washington, D.C., Sep. 8, 1971

IN THE MATTER OF THE CLAIM OF ROBERT L. CHEANEY, ET AL.

Claim No. CU-0915—Decision No. CU-4120

In accordance with the rule of the situs governing title to property, the Community Property Laws of Cuba were given effect under Title V of the Act.

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 ROBERT L. CHEANEY, for \$232,467.33, based upon personal property, an interest in a business, experimental seed samples, a debt owed by a nationalized Cuban enterprise and cash. Subsequently, MARJORIE L. CHEANET petitioned to join as a co-claimant. This matter having been considered, it is so ordered, and MARJORIE L. CHEANEY is joined as claimant herein. 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.

* This decision was entered as the Commission's Final Decision on November 21, 1969.

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.

PERSONAL PROPERTY

Claimants^{ts} state that they lost personal property consisting of household furnishing^s and appliances, clothes, fishing equipment, photographic equipment, tools and equipment, records, books and toys. In support of this item claimants submitted itemized lists and indicated that the items were purchased in 1953 and 1954 with the exception of the dining room table and chairs which were purchased in 1958 and an RCA record player which was purchased in 1959. In addition claimants also submitted receipts and bill of lading check lists from the Bekins Van Lines dated June 7, 1956.

According to the Community Property Law of Cuba, those properties which belong in equal parts to both spouses include (1) those acquired by one or both spouses during the marriage with money of the marriage partnership; (2) property acquired by the industry, salary or work of either or both spouses, and (3) the fruits, income or interests received or accrued during the marriage from the common or private properties of the spouses or spouse.

Based upon the entire record, the Commission finds that the claimants owned the above-mentioned personal property, in equal parts.

Law 989, published in the Official Gazette on December 6, 1961, by its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. Accordingly, this law applies to these claimants, who had left Cuba prior to that date; and the Commission finds that this property was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989.

In arriving at the value of the personal property consideration was given to claimants' itemization and approximate dates of purchase. Each item was depreciated 5% for each year from the approximate dates of purchase with the exception of the books which principally were technical in nature. The Commission finds that at the time of loss the aggregate value of the personal property amounted to \$7,542.00 and that claimants suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of the personal property by the Government of Cuba as of December 6, 1961.

BUSINESS

Claimants also state that they lost a one-half partnership interest in a rice farming operation in Mayajigua, Las Villas, Cuba, which partnership claimant, ROBERT L. CHEANEY, and Rafael Capo Lemus entered into in 1959. Claimant, ROBERT L. CHEANEY, asserts that he financed 75% of the venture but that Rafael Capo Lemus was in charge of the operation since claimant was fully employed by the enterprise Agricola Cayamas. Claimants further states the partners went to considerable expense to level the land, build canals and install pumps and motors; and that in 1960 rice was planted

on 165 acres, which acreage was leased by the partners on a basis of 10% of the production. Claimants state that the business was nationalized on or about January 15, 1961.

Based upon the entire record the Commission finds that the claimants jointly owned a one-half interest in this rice farming operation in Mayajigua, Las Villas which, in the absence of evidence to the contrary, is found to have been nationalized on January 15, 1961.

In arriving at the value of the machinery and equipment purchased by the partnership for use in the rice farming operation, consideration was given to an itemized list submitted by the claimants. Each item was depreciated 5% for each year from the date of purchase with the exception of the 1954 Chevrolet sedan which was depreciated in accordance with the National Automobile Dealers Used Car Guide. The Commission finds that at the time of loss the value of the machinery and equipment including the 1954 Chevrolet sedan was \$15,883.66, one-half of which belongs to claimants.

The claimants assert that there were 165 acres of rice that were planted and ready for harvesting at the time of loss on January 15, 1961. In arriving at the value of the rice harvest, consideration was given to the joint affidavit of owners and stockholders of the enterprise Agricola Cayamas wherein they state that the normal production of such farm as Mayajigua, Las Villas, was approximately 3,000 pounds per acre and the wholesale market value of seed rice in Cuba was from \$10.00 to \$14.00 per 100 pounds depending upon certain factors. The Commission finds, based upon such evidence, that the value of the rice to be harvested was \$59,400.00. This value was arrived at by taking the total rice harvest for 165 acres which is 495,000 pounds or 4,950 bags of 100 pounds each and multiplying the number of bags by \$12.00 (the average between \$10.00 and \$14.00 as stated above by the owners and stockholders of Agricola Cayamas, S.A.). Ten percent of the \$59,400.00 is deducted for the use of the land or \$5,940.00 and another ten percent is deducted for the estimated cost of harvesting, leaving a balance of \$47,520.00, one-half of which belongs to claimants. The Commission therefore finds that claimants suffered a loss in the amount of \$31,701.83 (which includes their interest in the machinery and equipment and the rice) within the meaning of Title V of the Act, as the result of the taking of the machinery, equipment, and rice by the Government of Cuba as of January 15, 1961.

EXPERIMENTAL RICE SAMPLES

Claimant, ROBERT L. CHEANEY, contends that he lost three sets of experimental rice samples, representative of his time, effort, and expertise in the value of \$150,000.00. In support of this item claimant submitted his own statement dated August 25, 1967, a joint affidavit from owners and stockholders of Agricola Cayamas, S.A. dated September 15, 1967, and a formula for arriving at the amount of loss. Claimant states that he was an expert in the maintenance of seed quality rice and in the development of new seed stocks through selective processes. This is substantiated by the statement of G. M. Watkins, Program Director, Dominican Republic Program, of the Texas A & M University System and the joint affidavit of stockholders and owners of Agricola Cayamas, S.A., a Cuban enterprise which operated a large rice farm at Cayamas, Oriente, Cuba. The evidence is that Agricola Cayamas, S.A. had hired claimant, ROBERT L. CHEANEY, in 1957, at a salary of \$24,000.00 per year plus a 15% interest in any profits from seed sales to outside growers. It further appears that he had personally developed for the company

strains of rice of established great marketable value which were ideal from a planting, cultivating and harvesting standpoint; and that his duties with Agricola Cayamas, S.A. were to give over-all technical assistance in the whole operation; maintain the seed quality; and develop new seed stocks through selective processes. In 1956 there were two rice diseases prevalent in Cuba called "Hoja Blanca" and "Blast," which were chiefly responsible for heavy losses in production. All Cuban rice varieties were susceptible to these two diseases except one which had considerable resistance to the two-mentioned diseases but which also had many undesirable characteristics. On a trip to Surinam in 1947, the claimant noticed a seed variety known as Paquita which possessed good table quality and produced good field and mill yields. In 1956 a rice breeding program was initiated and crosses were made between the "Alba" and "Paquita" varieties and the Surinam variety "Dima." This material was selected and replanted twice each year. By the end of 1960 several of the many selections were ready to put into a multiplication program prior to making sales to farmers. These selections had not yet been given a name when confiscated. They represented, however, 5 years of intensive work in the development of highly productive types of rice which had resistance to serious diseases, possessed good milling and table quality and could be harvested by mechanical harvesters. It is these samples which he developed that the claimant values at \$150,000.00.

Based upon the entire record, the Commission finds that Agricola Cayamas, S.A. owned three sets of experimental rice samples developed by ROBERT L. CHEANEY which samples were nationalized on December 6, 1961, pursuant to Law 989. The Commission finds that Mr. CHEANEY did not own said samples personally and that any value of same to him would arise only from his 15% interest in profits made from seed sales to outside growers. No such sales appearing in this record no allowance can be made to him on account of the nationalization of such property. The Commission expressly rejects this claimant's contention that he is entitled to claim a loss of \$150,000.00 on projected future sales. His losses, in this regard, if any, would arise out of a breach of this contract of employment and not out of any property right and is not one of the types of losses covered by the Act.

DEBT

Claimant, ROBERT L. CHEANEY, further states that he was employed by the enterprise Agricola Cayamas at \$24,000.00 per annum; that in January 1960 while he was on vacation, Agricola was intervened by the Government of Cuba; and that although the company maintained some control, the Government of Cuba would not continue to pay his salary of \$24,000.00 per annum. The company then asked Mr. CHEANEY to continue for one more year at \$15,000.00 per annum in the hope that its problems could be worked out. This he did. The claimant though thereafter left Cuba in December 1960 without collecting his December salary. He thus contends he is entitled to the difference in salary from \$24,000.00 to \$15,000.00 per annum for the year 1960 and for the loss of his salary for the month of December 1960.

With respect to the portion of the claim that is based upon the loss of the difference in salary between \$24,000.00 and \$15,000.00 for the year 1960, the claimant has submitted no evidence to establish any taking by the Government of Cuba. His acceptance of the reduced salary was a voluntary act on his part and is the opposite of a taking. Accordingly, the Commission denies that portion of the claim.

The record, however, shows, and the Commission finds, that Agricola Cayamas owed claimant \$1,250.00 as salary for the month of December 1960 and that Agricola Cayamas was nationalized on April 17, 1961 while owing *this* sum. The Commission has held that debts of nationalized Cuban enterprises are within the purview of Title V of the Act. (See *Claim of Krasner, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July—Dec. 1966].) The Commission therefore finds that claimant, ROBERT L. CHEANEY, suffered a loss of \$1,250.00 for loss of salary within the meaning of Title V of the Act.

CASH

Claimant, ROBERT L. CHEANEY, states that \$305.00 was confiscated from *his* person at the airport of Camaguey on November 22, 1959 prior to his leaving Cuba on a trip. Although the Cuban Government asserted it would return the money, it did not do so. In support of this claim, the claimant submitted a receipt from the Minister of Texas for the \$305.00.

The Commission finds on the basis of the evidence of record that the claimants jointly owned cash that was taken on November 22, 1959, and that the amount taken at the time of loss was \$305.00, within the meaning of Title V of the Act.

Claimants' losses may be summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	Amount
Personal Property	December 6, 1961	\$ 7,542.00
Business	January 15, 1961	31,701.83
Debt owed to claimants	April 17, 1961	1,250.00
Cash	November 22, 1959	305.00
	Total	<u>\$40,798.83</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 ROBERT L. CHEANEY 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 Thousand Three Hundred Ninety-nine Dollars and Forty-one Cents (\$20,399.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARJORIE L. CHEANEY 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 Thousand Three Hundred Ninety-nine Dollars and Forty-two Cents (\$20,399.42) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., Oct. 21, 1969.

**IN THE MATTER OF THE CLAIM OF THE BROTHERS OF
THE ORDER OF HERMITS OF ST. AUGUSTINE (INC.)**

Claim No. CU-3503—Decision No. CU-6812

Nonstock corporation organized in the United States, the members of trustees of which are citizens of the United States, qualify as nationals of the United States within the meaning of Title V of the Act.

PROPOSED DECISION *

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, is asserted by the BROTHERS OF THE ORDER OF HERMITS OF ST. AUGUSTINE (INC.) in the amended amount of \$ 7,976,728.68 based upon the ownership and loss of 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.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized as a non-profit organization under the laws of the State of Pennsylvania for educational, religious and charitable purposes and no shares of stock were issued. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act. (See *Claim of Independence Foundation*, Claim No. CU-2152.)

* This decision was entered as the Commission's Final Decision on October 8, 1971.

Claim has been asserted for the following losses:

<i>University of St. Thomas of Villanueva</i>			
Land	\$2,240,360.00		
Buildings	1,753,113.17		
Furnishings, equipment et al	1,110,117.25	\$5,103,590.42	
<i>El Cristo Property</i>			
El Cristo Church	\$ 598,811.25		
Colegio San Agustin	138,259.68		
Parochial School	194,577.73		
Dispensary	8,000.00		
Ricla Street, land & building	25,000.00	964,648.66	
<i>St. Augustine Property</i>			
Land use	\$ 53,680.00		
Monastery & Church	185,759.60		
Furnishings & Equipment	142,083.00		
Youth Center	61,000.00	442,522.60	
<i>St. Rita's Property</i>			
Land	\$ 57,375.00		
Buildings	280,000.00		
Furnishings & Equipment	158,249.00	495,624.00	
<i>St. Helen Property</i>			
Land	\$ 15,000.00		
Buildings	40,000.00		
Furnishings & Equipment	15,383.00	70,383.00	
<i>San Lorenzo Property</i>			
Land	\$ 200,000.00		
Buildings	495,000.00		
Furnishings & Equipment	30,760.00	725,760.00	
<i>Santa Monica Property</i>			
Land	\$ 33,500.00		
Buildings	45,100.00		
Trees	75,000.00		
Furnishings & Equipment	20,600.00	174,200.00	
Total			\$7,976,728.68

The Commission finds, on the basis of the record which will be discussed further with the particular properties, that claimant owned directly and indirectly through wholly owned Cuban entities, certain real and personal property in Cuba such as land, churches, university, clinic, school dispensaries and related furnishings and equipment.

The Commission further finds that these properties were intervened by the Government of Cuba on May 3, 1961 (see *Claim of Gustavus Basch*, Claim No. CU-0972). According to the record, all members of the claimant's Order in Cuba were expelled with one exception. That priest was permitted to remain but left in 1968 for reasons of health and has been unable to return. Since May 3, 1961, claimant has had no control or use of any of its Cuban properties. The Commission holds that claimant suffered losses within the meaning of Title V of the Act as a result of the intervention of all of its Cuban properties by the Government of Cuba on May 3, 1961. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

UNIVERSITY OF ST. THOMAS OF VILLANUEVA

In 1944, claimant purchased land on which to build the University. Construction of buildings was commenced and, in 1946, a Cuban corporation known as the "Society of Brothers of the Order of Hermits of St. Augustine" was established to operate the University. The authorized capital was \$100,000.00 consisting of 1,000 shares with a par value of \$100.00 per share of which only 10 shares were issued. After the formation of the Cuban corporation, a lease was entered into between claimant and the Cuban subsidiary wherein the subsidiary leased the land and buildings owned by claimant and the tenant was permitted to erect buildings on the leased land. Additional land was subsequently purchased by the Cuban corporation.

The record includes a balance sheet for the Cuban corporation as of July 31, 1960. However, this balance sheet does not appear to be appropriate to the property claimed and is not the basis for values determined herein by the Commission. Other evidence of record consists of appraisals by a real estate broker, an architect and engineer, the former librarian of the University now employed by the Pan American Union in Washington, D.C., a contractor whose firm constructed one of the University's buildings, and affidavits by former University officials as well as photos, deeds, copies of Cuban Government decrees and maps.

On the basis of the appraisals and affidavits, the Commission finds that the values of the properties owned by claimant or its subsidiary and occupied by the University on May 3, 1961 were:

Land (112,018 square meters)	\$2,240,360.00
Buildings, Chapel	150,000.00
Hickey	300,000.00
Library	210,000.00
Monastery	250,000.00
Talleres	237,000.00
Tarafa & Revilla	591,050.91
Athletic Field	15,062.26
Furnishings & Equipment	521,942.71
Library	161,000.00
Automobiles	8,474.54
Bank Account	67,000.00
Book Store	7,700.00
Cuban bond with interest to May 3, 1961	312,000.00
Total	<u>\$5,071,530.22</u>

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$5,071,590.42 for the taking of the University of St. Thomas of Villanueva.

A loss had been asserted in the amount of \$26,000.00 for accounts receivable as shown on the July 31, 1960 balance sheet. However there is no exact record of the accounts receivable and the accounts payable on May 3, 1961. Inasmuch as the accounts payable, including local taxes and deposits due students, on the 1960 balance sheet are approximately equal, the Commission finds that the accounts payable on May 3 1961 would offset any accounts receivable of that date and no loss is determined therefor.

2. EL CRISTO PROPERTY

The El Cristo property consisted of a church, parochial school, preparatory school, dispensary and the land located at Villegas and Lanparilla Streets and the rental property at 76 Ricla Street, Havana. The original plot was awarded claimant by decision in 1902 which divided church property seized by the Spanish Governor in 1842. The property was located three blocks from the Capitol of the Cuban Government. Additional purchases of land were made until the El Cristo complex covered almost the entire city block bounded by Villegas, Lanparilla, Amagura and Bernaza Streets and contained 2,869.42 square meters. The church was built in about 1640 but was enlarged in 1926, the original walls being moved to the outside and the church widened 18 feet on each side. Other structural improvements were made at an estimated cost of over \$200,000.00.

The parochial school was established about 1948. The old buildings used for the school were replaced in 1950 by a new building. The school was founded by a separate entity, an association known as "Escuela Gratuita de Ninos de la Iglesia del Cristo." However, the school was operated by claimant which controlled the association. Therefore the Commission finds that claimant was the owner and suffered a loss by the taking of the El Cristo properties on May 3, 1961.

Colegio San Agustin was the preparatory school established by claimant in 1912. It was operated by Corporacion San Agustin, a Cuban corporation organized by claimant. Title to the school property was later transferred to the Asociacion de la Iglesia del Cristo y Colegio de la Orden de San Agustin, through which claimant operated the school until July 1, 1953. After that date the school was operated directly by the Order of St. Augustine. Thus the Commission finds that claimant was the owner of the Colegio property taken by the Government of Cuba on May 3, 1961.

The remaining property owned by claimant through the El Cristo church consisted of a dispensary built on Villegas Street between the parochial school and the church in 1957, and rental property at 76 Murallo Street (formerly Ricla Street). According to the record, the dispensary was built at a cost of about \$8,000.00. There is no information of record of the cost of the rental property but it is described as a two-story building of brick construction and about 25 feet by 100 feet having a monthly rental of at least \$70.00. Claim is also made for the loss of bank accounts and accounts receivable for the Colegio and the parochial school in the total amount of \$6,500.00 which appears fair and reasonable, and securities issued by the Cuban Telephone Company in the amount of \$50,000.00.

The records of the Cuban Telephone establish that the El Cristo Parochial

School was the owner of 500 shares of Cuban Telephone Company preferred stock. The Commission has held that a claim based upon a stock of that company is within the purview of Title V of the Act because, although Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See *Claim of International Telephone and Telegraph Company*, Claim No. CU-2615.) In that claim, the Commission found that the assets of the company were taken by the Government of Cuba on August 6, 1960 and that the value per share of preferred stock was \$104.50 including accrued dividends. Therefore, the Commission finds that claimant suffered a loss with respect to the preferred stock in the amount of \$52,250.00 on August 6, 1960.

On the basis of all the evidence of record including the photographs, financial records, deeds, and affidavits the Commission finds that the values of the El Cristo properties were:

Land	\$358,677.50
El Cristo Church, buildings & furnishings	389,095.00
Parochial School, buildings & furnishings	82,077.73
Cuban Telephone Securities	52,250.00
Colegio San Austin building & equipment	45,298.43
Dispensary	8,000.00
76 Ricla	16,800.00
Cash & Accounts Receivable	6,500.00
Total	\$958,698.66

The Commission concludes that claimant suffered a loss in the amount of \$52,250.00 on August 6, 1960 when the Cuban Telephone Company's assets were nationalized and \$906,448.66 on May 3, 1961 when the El Cristo properties were taken.

3. ST. AUGUSTINE PROPERTY

Claimant asserts a loss in the amount of \$442,522.60 for the taking of its property in St. Augustine parish in La Sierra, Havana. In 1926, the first building was erected on land belonging to the Diocese of Havana. No claim is made for the taking of the land but for the loss of the use of the land, such loss being valued by claimant at \$53,680.00. The original building was a monastery which was also used as the parish chapel until the church was built between 1937 and 1941. Additional property including land and two buildings was purchased about 1953 for a Youth Center. The lot was approximately 100 feet by 120 feet. One building was a three-story house of brick containing 14 rooms the other being a garage with living quarters for the caretaker and his family. In support of the values claimed for the lost property, claimant has submitted complete descriptions of the buildings with pictures of the church and an itemized listing of the equipment and furnishing of the church and monastery.

On the basis of the evidence of record, the Commission finds that the values of the St. Augustine properties were:

Monastery	\$ 40,000.00
Church	145,759.60
Furnishings & Equipment	142,083.00
Youth Center	61,000.00
Total	\$388,842.60

The Commission concludes that claimant suffered a loss in the amount of \$388,842.60 for the taking of the St. Augustine properties on May 3, 1961.

No determination of loss is made for the land on which the monastery and church were located inasmuch as it did not belong to claimant.

4. ST. RITA PROPERTY

The property claimed for St. Rita's parish consisted of land, chapel, church and monastery. The land was purchased in 1941 and 1942 and contained 3,825 square meters, and was located at 5th Avenue and 26th Street, Reparto Miramar, Marianao. Initially the chapel was built and then, in 1942, construction commenced on the church which was completed in 1954. The adjacent monastery was built gradually during the years after 1942, having two separate sections joined by a long covered outside corridor. In support of the claimed values, claimant has submitted a statement by the architect, an affidavit listing the equipment and furnishings of the chapel, church and monastery and pictures of the church.

The Commission finds the values of St. Rita's property on May 3, 1961 to have been

Land	\$ 57,375.00
Chapel & Church	250,000.00
Monastery	30,000.00
Furnishings & Equipment	158,249.00
Total	<u>\$495,624.00</u>

The Commission concludes that claimant suffered a loss in the amount of \$495,624.00 for the taking of St. Rita's property on May 3, 1961.

5. ST. HELEN PROPERTY

In 1946, claimant purchased 3,618 square meters of land in Tarara, Guanabacoa, Cuba with the condition that a church be built upon that land within five years. The church was built the following year at a cost of \$40,000.00 according to an affidavit of an architect whose firm designed and inspected the construction of the building. Evidence in support of the values asserted include the aforesaid affidavit, an affidavit listing the equipment and furnishings of the church and attached living quarters and a photocopy of the original deed.

On the basis of all the evidence of record, the Commission finds that the values of St. Helen's parish property on May 3, 1961 were:

Land	\$15,000.00
Church building	40,000.00
Equipment & furnishings	15,383.00
Total	<u>\$70,383.00</u>

The Commission concludes that claimant sustained a loss in the amount of \$70,383.00 by taking of the St. Helen's parish property on May 3, 1961.

6. SAN LORENZO PROPERTY

The property belonging to the San Lorenzo complex consisted of a church, convent, school, dispensary and a day nursery located on Galbis Street, Reparto Buenavista Marianao, Cuba. To provide an income for the operation of the dispensary and nursery, two apartment buildings were built on land pur-

chased by claimant^t in the block bounded by Avenida Novena, Calle Quinta, Solar 24 and Solareo 2-11 in Marianao. Construction of the church, convent, school and dispensary was started in 1947. The building housing the school and convent originally contained a clinic but it proved to be too small and another wing was added to become the dispensary. The day nursery was built in 1956 as were the two apartment buildings.

Claimant asserts a value of \$725,760.00 for the loss of these properties and in support thereof has submitted photos of the dispensary and day nursery, newspaper accounts of the day nursery, affidavits of the former principal of the school and former Administrator of the dispensary and nursery which list the equipment and furnishings of the buildings, a statement of the rental income from the apartment houses, and an affidavit appraising the values for the items claimed.

Based upon the record, the Commission finds that the value of the San Lorenzo properties taken by the Government of Cuba on May 3, 1961 were:

Land		
Dispensary complex	\$ 80,000.00	
Apartment lot	120,000.00	\$200,000.00
Buildings		
Church, convent, school dispensary & day nursery	255,000.00	
Apartment houses	240,000.00	495,000.00
Furnishings & Equipment		
Church, school & convent	27,408.00	
Day nursery	3,352.00	30,760.00
Total		\$725,760.00

The Commission concludes that claimant suffered a loss in the amount of \$725,760.00 for the taking of the San Lorenzo properties on May 3, 1961.

7. SANTA MONICA PROPERTY

In 1958, claimant purchased property located near San Antonio de los Banos, Province of Havana for construction of a seminary. The property consisted of approximately $33 \frac{1}{2}$ acres of land most of it cultivated as an orchard with more than 1,500 trees of a variety of fruits, the main house, a garage with large living quarters attached, a caretaker's house, storehouse, stable equipment shed, pump house, and a small fuel storage building. The farm had a complete irrigation system electric cables, 1,500 feet of two-inch pipe for its water service, and a macadam road about 500 meters in length.

In support of the amount claimed for the loss of this property, claimant has submitted photos of the main building, an inventory of the property and an affidavit setting forth the values for the land and personal property as well as the buildings.

Based on the complete record, the Commission finds that the value of the Santa Monica property taken by the Government of Cuba on May 3, 1961 was:

Land	\$ 33,500.00
Buildings	45,100.00
Trees	75,000.00
Road, furnishings & equipment	20,600.00
<i>Total</i>	<u>\$174,200.00</u>

The Commission concludes that claimant suffered a loss in the amount of \$174,200.00 as a result of the actions of the Government of Cuba on May 3, 1961.

RECAPITULATION

Claimant's losses within the scope of Title V of the International Claims Settlement Act of 1949, as amended, are summarized as follows:

University of St. Thomas	\$5,071,590.42
El Cristo	958,698.66
St. Augustine	388,842.60
St. Rita	495,624.00
St. Helen	70,383.00
San Lorenzo	725,760.00
Santa Monica	174,200.00
Total	\$7,885,098.68

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 claim it is so ordered as follows:

FROM	ON
August 6, 1960	\$ 52,250.00
May 3, 1961	7,832,848.68

CERTIFICATION OF LOSS

The Commission certifies that BROTHERS OF THE ORDER OF HERMITS OF ST. AUGUSTINE (INC.) 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 Seven Million Eight Hundred Eighty-five Thousand Ninety-eight Dollars and Sixty-eight Cents (\$7,885,098.68) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

Dated at Washington, D.C., Sep. 8, 1971.

IN THE MATTER OF THE CLAIM OF OCCIDENTAL INSURANCE COMPANY OF NORTH CAROLINA

Claim No. CU-2353—Decision No. CU-3794

Claims based on loans to insureds of an American insurance company secured by the cash surrender values of the policies, which were in the possession of the insurance company, do not constitute losses under Title V of the Act.

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 \$835,902.09, was presented by OCCIDENTAL LIFE INSURANCE COMPANY OF NORTH CAROLINA, based upon the nationalization of its assets in Cuba.

* This decision was entered as the Commission's Final Decision on September 2, 1969.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of North Carolina. An authorized officer of claimant has certified that at all pertinent times 100% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It appears from the evidence of record that claimant had been authorized to conduct an insurance business in Cuba since 1947. In connection with these operations, claimant owned certain assets in Cuba; namely, bank deposits, stock interests, certain bonds, and mortgages against properties owned by Cubans held as security for loans made to said Cubans. The record contains extracts from claimant's books and records, certified to be accurate by claimant's Assistant Treasurer who has custody and control over claimant's financial books and records; receipts from The National City Bank of New York, Havana Branch, and from authorities of Cuba indicating the deposit of securities by claimant; copies of stock certificates; as well as bank statements and statements from officials of claimant concerning this claim.

On October 24, 1960, the Government of Cuba published in its official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the OCCIDENTAL LIFE INSURANCE COMPANY. The Commission finds that claimant's property in Cuba was nationalized on October 24, 1960, within the meaning of Title V of the Act, except as noted below.

Claimant has computed its claim as follows:

Bank Deposits	\$302,501.63
Stock interests	12,300 00

Bonds	209,055.42
Mortgages	184,401.86
Policy Loans	127,643.18
	<hr/>
	\$835,902.09

BANK DEPOSITS

Claimant's Assistant Treasurer has certified under date of August 17, 1967 that claimant's books and records at Raleigh, North Carolina show the following bank balances in Cuban banks as of October 24, 1960 the date of loss (with the peso being on a par with the United States dollar) :

National City Bank of New York	\$292,552.13
Banco Agricola E. 14Mercantil	1,449.50
Banco Agricola E. Industrial	8,500.00
Total	\$302,501.63

On the basis of the foregoing evidence, the Commission finds that on October 24, 1960, the date of loss, claimant owned bank deposits maintained in banks in Cuba with balances in claimant's favor aggregating the amount of \$302,501.63

STOCK INTERESTS

The record establishes and the Commission finds that claimant owned 23 shares of stock in Financiera Nacional de Cuba with a par value of 100 pesos per share, equivalent to \$100.00 per share. These shares had been purchased by claimant at par, and were carried on its books at that value.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders of this entity. The Commission held that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its assets were assumed by Cuba, and that a claim for the loss of a debt of the Government of Cuba arose under Title V of the Act on August 17, 1960, the date of liquidation. (See *Claim of Phoenix Insurance Company*, Claim No. CU-1913.) The Commission finds that the unpaid debt of Cuba to claimant on August 17, 1960 on account of claimant's interests in Financiera Nacional de Cuba was \$2,300.00, representing the face amount of these securities.

The record further shows that claimant owned 1,000 shares of preferred stock in the Anglo-American Insurance Company, S.A., with a par value of \$10.00 per share. These shares, likewise, had been purchased by claimant, and were carried on its books, at par value i.e. at \$10.00 per share. Evidence available to the Commission indicates that this corporation was nationalized by the Government of Cuba on April 28, 1964 pursuant to Resolution 1032 under Law 890. The Commission, however, finds that claimant sustained a loss with respect to these shares of stock on October 24, 1960 when all of its assets in Cuba were nationalized. In the absence of evidence to the contrary, the Commission finds that the value of these shares of stock on October 24, 1960 was \$10,000.00, the face amount of these securities, as indicated by claimant's books and records.

Accordingly, the Commission holds that the aggregate loss sustained by claimant with respect to its stock interests was \$12,300.00.

BONDS

The evidence establishes that claimant had on deposit with the First National City Bank of New York, Havana Branch, the following bonds:

1. Bonds in the face amount of \$19,000.00, of the issue known as 4% Republic of Cuba Veterans, Courts and Public Work Bonds, 1953-1983;
2. Bonds in the face amount of \$64,000.00, of the issue known as 4% Bonds of the Public Debt of Cuba, 1950-1980. It further appears that claimant had on deposit with Cuban authorities bonds of the same issue in the face amount of \$25,000.00; and,
3. Bonds in the face amount of \$100,000.00, of the issue known as 5 $\frac{1}{4}$ % Bonds of Fondo de Inversiones, F.H.A., due June 30, 1965.

The evidence establishes that the Government of Cuba defaulted on the payment of interest on the 4% Veterans, Court and Public Works bonds of 1953-1983 on May 1, 1961, the last payment of interest having been made for the period ending November 1, 1960. (See *Claim of Westchester Fire Insurance Company*, Claim No. CU-1703.) The Commission, therefore, finds that on October 24, 1960, the date loss, Cuba owed claimant \$19,000.00 with respect to these 4% bonds.

Evidence available to the Commission establishes that the 4% bonds of the Public Debt of Cuba 1950-1980 had attached interest coupons in the amount of \$20.00 each, payable semiannually on June 30 and December 31, with respect to each \$1,000.00 bond, until maturity on June 30, 1980. (See *Claim of Hartford Fire Insurance Company*, Claim No. CU-0021.) Extracts from claimant's records show that interest on these bonds was last paid for the semiannual period ending June 30, 1960. Accordingly, the Commission finds that on October 24, 1960, the date of loss, Cuba owed claimant \$90,124.96, representing \$89,000.00 in principal and interest in the amount of 1,124.96.

Evidence available to the Commission shows that the 5 $\frac{1}{4}$ % Fondo de Inversiones bonds due June 30, 1965 had been issued by a Cuban Government agency, equivalent to our Federal Housing Administration. [Lanzas, *Statement of the Laws of Cuba in Matters Affecting Business* 322-323 (2d ed. 1958).] Extracts from claimant's records show that interest on these bonds was last paid for the period ending June 30, 1960. Accordingly, the Commission finds that on October 24, 1960, the date of loss, Cuba owed claimant \$101,662.42, representing \$100,000.00 in principal and interest in the amount of \$1,662.42.

Therefore, the aggregate loss sustained by claimant with respect to the foregoing bonds was \$210,787.38.

MORTGAGES

The Commission finds on the basis of the evidence of record, including applications for mortgage loans and extracts from claimant's records that claimant had granted 15 loans to certain Cubans secured by mortgages on the real properties of the debtors. The Commission has held that all Cuban mortgages were cancelled on October 14, 1960 pursuant to the Urban Reform Law. (See *Claim of the Estate of Narita Dearing de Lattre, Deceased*, Claim No. CU-0116.) The following, obtained from the evidence of record, shows with respect to each mortgage as of October 14, 1960, the date of loss, the

unpaid principal amount, the rate of interest set forth in the mortgage agreement, the period of time for which interest was last paid and the amount of unpaid interest due:

	<i>Unpaid Principal</i>	<i>Rate of Interest</i>	<i>Period Last Paid</i>	<i>Interest Due</i>
1.	\$ 14,698.98	5%	July 1, 1960	\$ 211.86
2.	12,446.06	6%	July 1, 1960	216.31
3.	1,893.95	4%	Sept. 1, 1960	9.25
4.	16,784.27	6%	Nov. 1, 1959	960.70
5.	11,371.16	6%	Oct. 1, 1960	27.06
6.	11,653.79	6%	July 1, 1960	202.54
	4,689.69	6%	Feb. 1, 1959	480.13
8.	19,662.85	6%	Dec. 25, 1959	951.68
	29,446.96	4%	Jan. 26, 1960	942.29
10.	13,792.72	5%	July 1, 1960	199.29
11.	16,766.53	4%	Nov. 1, 1959	640.83
12.	2,911.61	6%	Nov. 1, 1960	
13.	16,876.24	5%	Sept. 1, 1960	103.08
14.	6,592.94	6%	Oct. 1, 1960	15.69
15.	4,794.11	6%	June 1, 1960	107.29
	<hr/>			
	\$184,401.86			\$5,068.00

The Commission holds that the aggregate loss sustained by claimant on October 14, 1960 with respect to its mortgages was \$189,469.86.

POLICY LOANS

Claimant has asserted a loss in the amount of \$127,643.18, representing approximately 200 loans made to Cubans "secured by the cash surrender value of policies."

Inasmuch as these loans were secured by funds in the hands of claimant, the Commission suggested under date of February 18, 1969 the submission of evidence establishing that this portion of the claim is based upon a nationalization, expropriation, intervention or other taking of claimant's property by Cuba within the purview of Title V of the Act, and for which asserted loss claimant had not already been compensated from the collateral funds in its possession. No reply was received from counsel or claimant either to this inquiry or to a "follow-up" letter of the Commission, dated April 17, 1969.

Upon consideration of this matter, the Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of its claim. Accordingly, this portion of the claim is denied.

Claimant's losses may be summarized as follows:

<i>Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Bank deposits	October 24, 1960	\$302,501.63
23 shares of Financiera Nacional de Cuba	August 17, 1960	2,300.00
1,000 shares of Anglo- American Insurance Company, S.A.	October 24, 1960	10,000.00
4% Bonds (1953-1983)	October 24, 1960	19,000.00

<i>Property</i>	<i>Date of Loss</i>	<i>Amount</i>
4% Bonds (1950-1980)	October 24, 1960	90,124.96
5 ¹ / ₄ % Bonds due June 30, 1965	October 24, 1960	101,662.42
Mortgage ^s	October 14, 1960	189,469.86
Total		<u>\$715,058.87</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 respective dates 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:

<i>FROM</i>	<i>ON</i>
August 17, 1960	\$ 2,300.00
October 14, 1960	189,469.86
October 24, 1960	523,289.01
Total	<u>\$715,058.87</u>

CERTIFICATION OF LOSS

The Commission certifies that OCCIDENTAL LIFE INSURANCE COMPANY OF NORTH CAROLINA 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 Seven Hundred Fifteen Thousand Fifty-eight Dollars and Eighty-seven Cents (\$715,058.87) with interest at 6% per annum from the respective dates of loss to the (late of settlement.

Dated at Washington, D.C., July 30, 1969.

IN THE MATTER OF THE CLAIM OF EBASCO INDUSTRIES INC.

Claim No. CU-3548—Decision No. CU-3866

Claims based upon debts owing by a United States national corporation are not covered by Title V of the Act unless such debts are a charge against property which has been nationalized or otherwise taken by the Government of Cuba.

Contractual right to receive bonds which would be secured by a mortgage on property of a United States national corporation in Cuba does not constitute a debt which is a charge against nationalized property unless such right has been exercised.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$42,714,767.55 plus interest was originally presented by American & Foreign Power Company, Inc., predecessor in interest to EBASCO INDUS-

* A Final Decision was entered on this claim on Nov. 3, 1969, to reflect that claimant had merged with an into the Boise Cascade Corporation.

TRIES INC., based upon the asserted loss of certain real property in Cuba and bonds issued by the Cuban Electric Company.

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.

Section 502(1) (B) of the Act defines the term "national of the United States", as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that American & Foreign Power Company, Inc., was merged with and into Electric Bond & Share Company on December 31, 1967, and the name subsequently changed to EBASCO INDUSTRIES INC., which is substituted as claimant herein. The American & Foreign Power Company, Inc., was organized under the laws of the State of Maine and an officer of that corporation has certified that at all times more than 50% of its outstanding capital stock has been owned by nationals of the United States and that as of May 25, 1966, holders of 0.0017% of its outstanding capital stock had addresses outside the United States. An officer of Electric Bond & Share Company has certified that at all pertinent times the number of shares of its outstanding capital stock owned by non-residents of the United States has never exceeded 3%. The Commission holds that American & Foreign Power Company Inc., Electric Bond and Share Company, and EBASCO INDUSTRIES INC. qualify as nationals of the United States within the meaning of Section 502(1) (B) of the Act.

Claim is made herein for losses assertedly sustained by the American & Foreign Power Company, Inc. for the following:

1. A 53.22362% interest in real property known as "La Puntilla" located in Marianao, Havana Province, Cuba;
2. First and Refunding Mortgage bonds 4U% Peso Series, due 1980; First Mortgage bonds, 4'h % Dollar series, due 1980; First Mortgage

bonds 4 $\frac{1}{4}$ % Dollar Series B, due 1980; First Mortgage bonds, 5% Peso Series C, due 1980; and First Mortgage bonds, 5% Peso Series D due 1987, issued by the Cuban Electric Company, and having a total principal amount of \$11,330,300;

3. A contractual right to receive bonds in the amount of \$26,135.00 issued by the Cuban Electric Company; and

4. A contractual right to receive an additional amount of bonds in the principal amount of \$3,800,000 in return for cancelling a demand note of the Cuban Electric Company.

1. *Real property*

Claimant asserts a loss in the amount of \$113,898.55 for a 53.22362% interest in land in Marianao, Havana Province, Cuba. In support of this portion of the claim, a copy of the deed to Edward L. Kanter dated October 7, 1954, and an affidavit of Mr. Kanter have been submitted. By the terms of the deed, the Havana & Insular Real Estate Company conveyed a parcel of land having on area of 6,160.90 square meters to Edward L. Kanter for the sum of \$214,000.00, which land was located in Marianao, Cuba. According to the affidavit of Edward L. Kanter, the land was conveyed to him for the benefit of Cuban Electric Company and American & Foreign Power Company, Inc. Cuban Electric Company has also filed its separate claim, No. CU-2578, in the amount of \$100,101.45 for the remaining interest in the land which both companies valued at the purchase price of \$214,000.00. The Commission finds that the purchase price represented the value of the property at the time it was confiscated.

The record also contains the affidavit of Armando Leret, an attorney who formerly practiced in Cuba. This instrument shows that he was acquainted with the interests of the two companies in the Marianao property; that he frequently went past the property; and that in February 1960 it was occupied by an organization of the Cuban Government which had started some construction thereon.

The Commission finds that claimant owned a 53.22362% interest in 6,160.90 square meters of land in Marianao, Cuba, and that it was taken by the Government of Cuba on February 1, 1960. As a result of the actions of the Government of Cuba, the Commission concludes that claimant sustained a loss by the confiscation of said land in the amount of \$113,898.55 within the meaning of Title V of the Act.

2. *Mortgage bonds of the Cuban Electric Company*

Claim is made for the principal and unpaid interest due on August 6, 1960 on the following bonds issued by the Cuban Electric Company:

<i>Bonds</i>	<i>Principal</i>	<i>Interest</i>
First and Refunding Mortgage bonds:		
4 $\frac{1}{4}$ % Peso Series, 1980 - - - - -	\$615,500.00	\$24,923.00
4 $\frac{1}{2}$ % Dollar Series, 1980 - - - - -	8,500,000.00	216,750.00
First Mortgage bonds, 4 $\frac{1}{4}$ % Dollar Series B, 1980 - - - - -	1,965,000.00	50,108.00
First Mortgage bonds, 5% Peso Series C, 1980 - - - - -	35,800.00	1,045.00

<i>Bonds</i>	<i>Principal</i>	<i>Interest</i>
First Mortgage bonds 5% Peso Series D, 1987 -----	214,000.00	8,935.00
Total	\$11,330,300.00	\$301,761.00

On the basis of evidence of record, the Commission finds that claimant is and since prior to August 6, 1960, has been the owner of the above described bonds issued pursuant to a Mortgage and Deed of Trust dated as of January 1, 1950, as supplemented, with the First National City Bank of New York as trustee. By that indenture and the supplements thereto, the bonds issued thereunder were secured by the property in Cuba of the Cuban Electric Company, a corporation organized under the laws of the State of Florida which qualifies as a national of the United States. The properties of the Cuban Electric Company were listed as nationalized by Resolution No. 1 (pursuant to Law 851 of July 6, 1960) of the Government of Cuba effective August 6, 1960. Claimant's bonds therefore represented a debt which was a charge upon nationalized property as defined in Section 502(3) of the Act. The Commission concludes that as a result of the nationalization of the properties of the Cuban Electric Company in Cuba, claimant suffered a loss in connection with its bonds within the meaning of Title V of the Act.

The Commission finds that the total amount of the unpaid indebtedness on claimant's bonds including the principal amounts and interest due to August 6, 1960, is as follows:

<i>Bonds</i>	<i>Principal</i>	<i>Interest</i>
First and Refunding Mortgage bonds:		
414% Peso Series, 1980 --	\$615,500.00	\$ 24,923.00
4 $\frac{1}{2}$ % Dollar Series, 1980 -----	8,500,000.00	216,750.00
First Mortgage bonds, 414 $\frac{1}{2}$ % Dollar Series B, 1980 -----	1,965,000.00	50,108.00
First Mortgage bonds, 5% Peso Series C, 1980 -----	35,800.00	1,045.00
First Mortgage bonds 5% Peso Series D, 1987 -----	214,000.00	8,935.00
Total	\$11,330,300.00	\$301,761.00

for a total loss of \$11,632,061.00.

3. *Contractual right to receive bonds of \$21,175,000.00 value*

Claimant asserts ^a a loss in the amount of \$26,135,000.00 on the basis of Dollar-Peso Bond Agreements with the Cuban Electric Company. During the period 1952-1957, it became necessary for the Cuban Electric Company to borrow funds from the Export-Import Bank in Washington and Financiera Nacional de Cuba in Havana. To provide the required collateral for loans, Dollar and Peso Mortgage Bonds issued by Cuban Electric Company and held by claimant were borrowed from claimant by the company. Under the Dollar-Peso Agreements, claimant was to be repaid by bonds or in cash semi-annually beginning December 31, 1957. Under the terms of the agreements, claimant would receive interest on the principal at the rate of three-fourths or of 1% per annum, and at the maturity of the coupons attached to the borrowed Dollar Bonds and Peso Bonds, such coupons would become the property of claimant. On August 6, 1960, when Cuban Electric Company's assets were nationalized, the principal amount still due and owing to claimant was \$26,135,000.00.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant contends that, since it was entitled to receive mortgage bonds of the Cuban Electric Company in payment of the borrowed bonds, the obligation was a charge on its property. The terms of the agreements, however, gave the debtor the option of paying the specified semiannual payment in cash or in mortgage bonds. Additionally, the amounts unpaid were listed in the 1959 Annual Report of the Cuban Electric Company on page 14, Schedule of Long-Term Debt, as Loans Payable to American & Foreign Power Company, Inc. (claimant's predecessor in interest) and in Note A to that schedule reference is made that these loans may be satisfied either by delivery of mortgage bonds or payment of cash.

Claimant, therefore, by terms of the agreements had surrendered the secured obligations of Cuban Electric Company in exchange for the right to receive similar secured obligations or cash at a future date, neither of which it received. Even though the obligor was the wholly owned subsidiary of claimant and the exchange was not an arms-length transaction, the failure to receive secured bonds is not a basis for determining a loss in its favor under the Act. It would appear that the Export-Import Bank of Washington, which holds the collateral, is the proper party claimant for these bonds. Unfortunately, however, that bank cannot join in this claim because it is an agency of the U.S. Government and is not an eligible claimant under Title V of the Act. (See *Claims of the United States of America*, Claim No. CU-2522 and Claim No. CU-2618, 1967 FCSC Ann. Rep. 50.) That does not mean, though, that at some time in the future the bank, or the American Government, will not have a claim for this loss under a new statute or in direct negotiations with Cuba.

On basis of the evidence of record, the Commission concludes that the obligation to pay claimant the amount of \$26,135,000.00 under the terms of the Dollar-Peso Agreements for the mortgage bonds borrowed and used as collateral for subsequent loans was not a charge upon property as specified in Section 505(a) of the Act. Accordingly, this portion of the claim is denied.

4. *Contractual right to receive bonds of \$3,800,000.00 value*

By agreement dated December 30, 1954, Cuban Electric Company agreed to authorize the issuance of mortgage bonds to claimant's predecessor in an amount of not less than \$3,800,000.00 in exchange for the cancellation of a note in the principal amount of \$3,800,000.00. The bonds to be issued were to be secured by a mortgage on the Cuban property of the Cuban Electric Company. The debtor was to pay interest at the rate of 5% per annum from the date of the agreement to the date of issuance of the bonds. No bonds, however, were issued by Cuban Electric Company in performance of its obligations under the agreement.

In order that the amount of \$3,800,000.00 plus interest be certifiable as a loss under the Act, it must be established that the amount was in fact, a

charge on property which had been nationalized, expropriated, intervened, or taken by the Government of Cuba (Section 505(a), supra).

The only evidence of record here, however, establishes that claimant had an unsecured demand note for the amount of \$3,800,000.00 which it agreed to cancel in exchange for secured bonds of the Cuban Electric Company. Cuban Electric Company entered into the agreement with claimant in 1954 but did not perform its part of the agreement since the bonds were never issued. Inasmuch as claimant did not receive the secured bonds but merely has a contract which has not been specifically performed, the Commission concludes that the debt is not a charge on property which has been taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

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 respective dates of loss to the date of settlement (see *Clainz of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<i>From</i>	<i>On</i>
Feb. 1, 1960	\$ 113,985.55
Aug. 6, 1960	11,632,061.00
	\$11,745,959.5a

CERTIFICATION OF LOSS

The Commission certifies that EBASCO INDUSTRIES INC. 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 Eleven Million Seven Hundred Forty-Five Thousand Nine Hundred Fifty-Nine Dollars and Fifty-Five Cents (\$11,745,959.55) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., Sep. 11, 1969.

IN THE MATTER OF THE CLAIM OF ESTATE OF GRENVILLE M. DODGE, DECEASED

Claim No. CU-1290—Decision No. CU-1143

Farms and rural properties were expropriated pursuant to the Agrarian Reform Law of May 17, 1959, implemented by regulations of October 1959.

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 the COUNCIL BLUFFS SAVINGS BANK, as TRUSTEE, for the ESTATE OF GRENVILLE M. DODGE, DECEASED, in the amount of \$40,000.00, based upon the asserted loss of 38 caballerias of land situated in the Barrio Jati-bonico, Province of Camaguey, Cuba. The beneficiaries of the state of Grenville M. Dodge, Deceased, have all been nationals of the United States since birth.

* This decision was entered as the Commission's Final Decision on March 13, 1968.

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.

Based upon a copy of a decree of the Court of Constitutional and Social Rights, entered November 24, 1960, on appeal from a decree issued on June 21, 1960, by the Justice of the Court of First Instance of Ciego de Avila, the Commission finds that the heirs of Grenville M. Dodge, Deceased, owned certain land in the province of Camaguey, Cuba. Other evidence of record establishes that this consisted of thirty-eight caballerias of land in the Barrio Jatibonico, and was known as "Finca Rollete." The aforesaid decree of June 21, 1960 decreed expropriation of the estate by right of eminent domain, to become the property of the National Institute of Agrarian Reform, for disposal by the said Institute under the Act of Agrarian Reform; and further provided for indemnity to be paid in cash in Agrarian Reform Bonds or by a certificate thereof by the Institute to the heirs.

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 and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

Article 31 of the Agrarian Reform Law provided that indemnity should be paid in redeemable bonds; and set out that to that end an issue of Republic of Cuba bonds should be floated in such amount, and under such terms and conditions, as might be fixed in due time, the bonds to be called "Agrarian Reform Bonds" and to be considered public securities. Claimant avers that no compensation of any kind has been received in respect to the expropriation of said real estate and that there are no credits or off-sets to this claim. The Commission finds that the thirty-eight caballerias of land belonging to the Estate of Grenville M. Dodge, Deceased, were taken by the Government of Cuba on June 21, 1960, pursuant to the provisions of the Agrarian Reform Law.

The record contains an affidavit of Laverne Tollinger setting out his lengthy association with the Trustee, his familiarity with the property of the Estate, and stating that it was under the active management of Compania Cubana, a sugar mill operation; and two affidavits of H. J. Schreiber, former Manager of the Ingenio Jatibonico of Compania Cubana, in Jatibonico, in which he states that the Compania Cubana leased the land to various tenants on behalf of the Grenville M. Dodge Trust Estate, and purchased the sugar cane grown thereon, remitting the net proceeds to the Trustees. Further, Mr. Schreiber states that the asserted value of \$40,000 is based on an approximate net annual income derived from the rent after taxes, and represents a return of 5 per cent, and that while the rental varied from year to year, it would not be less than \$2,000.00. On the basis of the entire record, including these affidavits, the Commission finds that at the time of loss, the aggregate value of the 38 caballerias of land was \$40,000.00, and concludes that the claimant suffered a loss in that amount, within the meaning of Title V of the Act.

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.

Accordingly, the Commission concludes that the amount of the loss sustained by claimant as trustee shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that the COUNCIL BLUFFS SAVINGS BANK, as TRUSTEE of the ESTATE OF GRENVILLE M. DODGE, DECEASED, 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 Forty Thousand Dollars (\$40,000.00) with interest thereon at the rate of 6% per annum from June 21, 1960, to the (late of settlement.

Dated at Washington, D.C., Feb. 7, 1968.

IN THE MATTER OF THE *CLAIM OF* PLACIDO NAVAS COSTA, *ET AL.*

Claim No. CU-3344—Decision No. CU-6016

Upon finding that the claim of an American, who is still in Cuba, is valid under the Act, the Commission may enter a Certification of Loss in his favor.

PROPOSED DECISION ;

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on May 2, 1967 after due notice on behalf of Placido Navas Marquez (now deceased) for \$406,500 based upon the asserted ownership and loss of certain real properties and a business in Cuba.

Placido Navas Marquez was last married to Francisca Costa Garcia, a

United States national from birth who died intestate on May 27, 1966. Placido Navas Marquez, also a United States national from birth, died intestate on March 22, 1969, survived by six children who are substituted as claimants herein. Two of these heirs are outside the United States and need not be identified in this decision.

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 aggregate losses, subject of this claim, were described as follows:

1) 563 Goicuria, Havana	\$ 17,500
2) 561 Goicuria	17,500
3) 565 Goicuria	60,000
4) Freyre de Andrade, No. 114	9,000
5) Freyre de Andrade, No. 112	9,000
6) 4th between C and D, Playa Hermosa	22,500
7) C and 4th, Playa Hermosa	20,000
8) Lot (related to item (5))	10,000
9) Patrocinio 412	20,000
10) Trocadero 75	16,000
11) 72.72% of P. Navas & Co.	80,000
12) Inventory of P. Navas & Co.	125,000
	<hr/>
	\$406,500

REAL PROPERTY

Based upon the entire record, including an adjudication of the estate of claimants' uncle, a widower, as well as a listing of deeds, and reports from abroad, the Commission finds that Placido Navas Marquez (now deceased) owned fractional interests in certain realties in Cuba, further discussed below, and upon his death, on March 22, 1969, his six children succeeded to his interests.

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).

On the basis of the foregoing, the Commission finds that the real property interests of Placido Navas Marquez in Cuba were 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 October 14, 1960, the date on which the law was published in the Cuban Gazette. (See *Claim of Henry Lewis Slade*, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The Commission finds that Placido Navas Marquez owned the following real property interests:

- (2) All of the improved realty at 561 Goicuria
- (3) $\frac{1}{2}$ of the improved realty at 565 Goicuria
- (4) $\frac{1}{2}$ of Freyre de Andrade 114, improved
- (5) $\frac{1}{2}$ of Freyre de Andrade 112, improved
- (6) $\frac{1}{2}$ of property on 4th Street, between C and D, Playa Hermosa
- (7) $\frac{1}{2}$ of property at C and 4th, Playa Hermosa
- (8) $\frac{1}{2}$ of the lot in Deed 202 (related to item (5))
- (9) All of Patrocinio 412
- (10) All of Trocadero 75

With respect to the property at 563 Goicuria (Item 1), the Commission finds that this house and lot belonged to Carmen Navas Franquiz and Monserrate Navas Franquiz (Claim No. CU-3013), cousins of claimants, and that claimants herein had no interest therein. Accordingly, this part of the claim is denied.

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 record includes, in addition to asserted values, those values recited in the Document of Adjudication of the Estate of Francisco Navas y Marquez, uncle of claimants; descriptions of the properties; rental figures, said to be depressed by Cuban legislation "freezing" rentals, and values in reports obtained from abroad. On the basis of this record, the Commission finds that the interests of Placido Navas Marquez (now deceased) in the real properties had the following values:

<i>Item</i>	<i>Value</i>
(2) Goicuria	\$ 8,000.00
(3) 565 Goicuria	15,000.00
(4) 114 Freyre de Andrade	1,300.00
(5) 112 Freyre de Andrade	1,800.00
(6) 4th between C and D	2,500.00
(7) C and 4th	3,700.00
(8) Lot (related to (5))	110.00
(9) Patrocino 412 (equity)	9,500.00
(10) Trocadero 75 (equity)	3,620.00
	es 620.00

Accordingly, the Commission concludes that these six claimants succeeded to and suffered a loss in the aggregate amount of \$45,530.00 within the meaning of Title V of the Act, as the result of the taking of these real properties by the Government of Cuba on October 14, 1960.

P. NAVAS & Co.

According to the record this entity, engaged in the import-wholesale business, particularly bicycles and parts, since at least the early 1950s when one Francisco Navas Marquez (brother of the decedent in this matter) owned an interest in it, and when it was known as F. Navas & Co. Upon the death of said Francisco Navas Marquez on December 2, 1952 his interest was devised to his daughters (claimants in CU-3013) and in the settlement of this estate it was valued at \$58,795.49.

Thereafter in about 1952 or 1953, Placido Navas Marquez (now deceased) and his son PLACIDO NAVAS COSTA, (one of the claimants herein) purchased the interest of the sisters. A notarial document, No. 213, of May 29, 1959 sets out that the father and son were partners, the name of the entity having been changed, that the capital had been increased to \$110,000 in which the interest of the father was \$80,000 and the interest of his son was \$30,000, and that profits and losses were to be divided equally. Claim is made here only for the interest of Placido Navas Marquez (now deceased) specifically his capital of \$80,000 and one-half of an asserted inventory of \$125,000.

The Commission finds that in fact Placido Navas Marquez (now deceased) was the owner of P. Navas & Co. to the extent of 72.727 per cent.

The data accumulated by the Commission does not disclose a date of nationalization of this entity by the Government of Cuba. The record in this case variously asserts taking on January 1, 1959, when the communist regime took over the country of Cuba; that it was taken over in 1965; and that it was seized during the period 1961 to 1965. On the basis of this record, and in the absence of evidence to the contrary, the Commission finds that the entity P. Navas & Co. was nationalized by the Government of Cuba on June 30, 1965.

In addition to the capital investment, it is said that there was a warehouse inventory of \$125,000 and that yearly sales amounted to \$650,000. In support there has been submitted various excerpts from the records of companies who shipped materials to the company in Cuba, in 1958 and 1959, reflecting shipments of \$78,060.47, \$92,012.90, \$24,221, \$43,397.80 and the like. It is said that no balance sheets are available. Also, the record includes an affidavit from a former commercial loan officer with title of Assistant Manager of the First National Bank of Boston in Havana from 1940 to 1960, who states that to his recollection the company had a credit line with that bank of \$100,000 and their inventory was in the neighborhood of \$200/250,000. Further, the record includes the affidavit of a former accountant in Cuba who numbered the company among his clients, and who states that Placido Navas Marquez (now deceased) was a partner with an investment of \$80,000 of the total \$110,000 invested; that the book value of his investment at 1959-1960 was more than \$90,000 approximately; and that the partnership was taken in 1965.

The Commission has considered this record and finds that the asset value of P. Navas & Co., on the date of loss, was \$110,000 from which must be deducted a debt of \$68,301.15 (which has been certified as a loss to another

claimant in Claim No. CU-0126). Accordingly, the net value of P. Navas & Co. is found to have been \$41,698.85, and the interest therein of ^Placido Navas Marquez (now deceased) was \$30,326.32, to which these six ^{cl}aimants **have succeeded** in equal **parts**.

RECAPITULATION

The losses within the scope of Title V of the Act to which these ^{cl}aimants have succeeded are summarized below:

	<i>Realty</i>	^B usiness
PLACIDO NAVAS COSTA	\$7,588.33	\$5,054.39
MERCEDES ARBONA	7,588.33	5,054.39
DOLORES GAUDIER	7,588.33	5,054.38
MYLES T. NAVAS	7,588.33	5,054.38
FIFTH SIBLING	7,588.34	5,054.38
SIXTH SIBLING	7,588.34	5,054.38

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:

	<i>From</i>	<i>On</i>
PLACIDO NAVAS COSTA	Oct. 14, 1960	\$7,588.33
	June 30, 1965	5,054.39
MERCEDES ARBONA	Oct. 14, 1960	7,588.33
	June 30, 1965	5,054.39
DOLORES GAUDIER	Oct. 14, 1960	7,588.33
	June 30, 1965	5,054.38
MYLES T. NAVAS	Oct. 14, 1960	7,588.33
	June 30, 1965	5,054.38
FIFTH SIBLING	Oct. 14, 1960	7,588.34
	June 30, 1965	5,054.38
SIXTH SIBLING	Oct. 14, 1960	7,588.31
	June 30, 1965	5,054.38

CERTIFICATION OF LOSS

The Commission certifies that PLACIDO NAVAS COSTA 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 Twelve Thousand Six Hundred Forty-two Dollars and Seventy-two Cents (\$12,642.72) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that MERCEDES ARBONA 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 Twelve Thousand Six Hundred Forty-Two Dollars and Seventy-two Cents (\$12,642.72) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that DOLORES GAUDIER 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 Twelve Thousand Six Hundred Forty-two Dollars and Seventy-one Cents (\$12,642.71) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that MYLES T. NAVAS 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 Twelve Thousand Six Hundred Forty-two Dollars and Seventy-one Cents (\$12,642.71) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

The Commission certifies that A Fifth Sibling suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International^{al} Claims Settlement Act of 1949, as amended, in the amount of Twelve Thousand Six Hundred Forty-two Dollars and Seventy-two Cents (\$12,642.72) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that A Sixth Sibling 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 Twelve Thousand Six Hundred Forty-two Dollars and Seventy-two Cents (\$12,642.72) with interest thereon 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 January 6, 1971.

IN THE MATTER OF THE CLAIMS OF EFIM GOLODETZ, ET AL.

Claim Nos. CU-1816, 1818, 1819 and 1820—Decision No. CU-6763

The beneficial owner of a claim and not a trustee or nominal holder is the real party in interest who must meet the U.S. nationality prerequisites of Title V of the Act.

PROPOSED DECISION

These claims against the Government of Cuba were filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amounts of \$12,868.58 (EFIM GOLODETZ, Claim No. CU-1816), \$192,584.90 (LEO ELIASH, Claim No. CU-1818), \$604,379.33 (Intercontinental Affiliates, Claim No. CU-1819), and \$887,488.00 (M. GOLODETZ & CO., Claim No. CU-1820), are based upon asserted losses of certain personal property in Cuba, including stock interests in West Indies Trading Company, a Cuban corporation hereafter called Wintrade.

Under Title V of the International Claims Settlement Act of 1959 [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 in-

* This dohpsfn entered as the Commission's Final Decision on September 15, 1971.

eluding 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

With respect to the nationality of claimants, the record shows the following:

EFIM GOLODETZ (Claim No. CU-1816) has been a national of the United States since January 28, 1946.

Claim No. CU-1818 was filed by Trust #1 (claimants' designation) which was created as an irrevocable trust pursuant to an agreement of October 3, 1950 with Simon Golodetz, a copy of which is of record. The agreement named four beneficiaries, two of whom were British nationals and two American nationals. By indenture of March 7, 1966, the trustees duly transferred title to 900 shares of stock in Wintrade to LEO ELIASH, one of the beneficiaries, who has been a national of the United States since February 3, 1943. (See *Claim of Namarib Company*, Claim No. CU-1817.) Those 900 shares of stock constitute the sole basis of Claim No. CU-1818. Pursuant to paragraph "THIRD" of the trust agreement, that transfer of March 7, 1966 effectively terminated the trust insofar as the 900 shares of stock are concerned. Accordingly, LEO ELIASH has been substituted as claimant in place of Trust #1. This claim presents an issue involving the provisions of Section 504(a) of the Act, which issue is discussed in detail below.

INTERCONTINENTAL AFFILIATES (Claim No. CU-1819) is a partnership organized under the laws of New York. In addition to LEO ELIASH and EFIM GOLODETZ its partners are: JOACHIM GINZBERG, MARC L. GINZBERG, OSCAR GOLODETZ, DAVID GINZBERG and ISAAC SUDER, nationals of the United States since April 4, 1927, September 9, 1929, January 28, 1946, April 13, 1934 and August 12, 1924, respectively. On the date of loss in 1960, as indicated hereafter, the partners of INTERCONTINENTAL AFFILIATES were LEO ELIASH, JOACHIM GINZBERG, EFIM GOLODETZ, and Simon Golodetz, the last named person having been a national of the United States from June 19, 1944 until his death on October 19, 1963.

In 1963, MARC L. GINZBERG, OSCAR GOLODETZ, DAVID GINZBERG and ISAAC SUDER were admitted as new partners of INTERCONTINENTAL AFFILIATES. The estate of Simon Golodetz, deceased, was

reimburse^d by the partnership for the deceased's interest in the partnership. Simon Golodetz's sole heirs were his nephews, Oscar Golodetz and Arnold Golodetz, the sons of EFIM GOLODETZ, and nationals of the United States since January 28, 1946. The transfers of interests in the partnership and ownership of interests in the 2,820 shares of stock in Wintrade, the sole basis of Claim No. CU-1819, were at all pertinent times among nationals of the United States. The Commission holds that INTERCONTINENTAL AFFILIATES is a national of the United States within the meaning of Title V of the Act. (See *Claim of The Cuban Plantation Company*, Claim No. CU-0093.)

The status of the partnership, M. GOLODETZ & CO. (Claim No. CU-1820), is discussed hereafter.

Claimants assert the following losses:

Claim No. CU-1816—EFIM GOLODETZ	
60 shares of stock in Wintrade	-----\$12,868.58

Claim No. CU-1818--LEO ELIASH	
900 shares of stock in Wintrade	-----\$192,584.90

Claim No. CU-1819—INTERCONTINENTAL AFFILIATES	
2,820 shares of stock in Wintrade	----- \$604,379.33

The above three claimants have computed their claims on the basis of one asset of Wintrade, certain raw sugar as follows:

377,943 bags of sugar (250 lbs, each bag) at \$0.0325	
per pound	----- \$3,070,787.00
Less a bank loan for which the sugar was security	2,183,299.00
Net equity	----- <u>\$ 887,488.00</u>

These claimants then determined the amounts of their claims on the basis of their proportionate interests in Wintrade which had 4,140 shares of outstanding capital stock on the date of loss. The fourth claimant, M. GOLODETZ & CO., bases its claim on the asserted ownership of the 377,943 bags of sugar, and therefore claims the total equity therein, \$887,488.00.

OWNERSHIP OF THE SUGAR

The first issue presented by these claims is whether the 377,943 bags of sugar were owned by Wintrade or by M. GOLODETZ & CO. Obviously, if Wintrade owned the sugar on the date of loss, it follows that the *Claim of M. GOLODETZ & CO.* must be denied and if the reverse is true, the other three claims must be denied. Counsel for claimants agrees with the foregoing but offers no assistance in resolving the issue beyond stating that the claimants will abide by any decision of the Commission in this respect. However, it is noted that the record contains correspondence from counsel and claimants from which it is clear that Wintrade was at all times regarded as the owner of the sugar.

This issue can be better understood in the light of certain background information. Customarily Wintrade would purchase sugar from various mills in Cuba. The sugar would be stored in warehouses and would be pledged as

security for loans obtained generally from the Chase Manhattan Bank, Cuban Branch. The amounts thus borrowed by Wintrade would be used to pay for the sugar. Subsequently the sugar would be sold to M. GOLODETZ & CO. After delivery of the sugar to M. GOLODETZ & CO. payment would be made to Wintrade which, in turn, would pay the creditor bank and liquidate its debt.

In the instant case, Wintrade acquired title to 377,943 bags of sugar in Cuba. As stated by counsel in his letter of May 11, 1971, Wintrade borrowed \$2,350,000.00 on April 6, 1960 from Chase Manhattan Bank, Cuban Branch, and pledged the sugar as security for the loan. It appears from JOACHIMYI GINZBERG's affidavit of November 24, 1965, that early in 1960 Cuba commenced interfering with Wintrade's sugar operations. As a result, Wintrade was unable either to sell the sugar to M. GOLODETZ & CO. or otherwise dispose of it.

On September 17, 1960, the Government of Cuba nationalized the Cuban Branch of the Chase Manhattan Bank by the issuance of Resolution No. 2 pursuant to Law 851. The record shows that on October 14, 1960 Wintrade was required by Cuban authorities and actually did pay \$2,350,000.00 to the National Bank of Cuba, an agency of the Government of Cuba, to liquidate the loan of April 6, 1960, from the Chase Manhattan Bank. On the same date, October 14, 1960, Wintrade secured a loan from the National Bank of Cuba in the amount of \$2,183,299.25 and pledged the 377,943 bags of sugar as security.

The record includes an unsigned copy of a loan and pledge agreement to that effect. The agreement with the National Bank of Cuba, which was actually executed and contained identical provisions as in the proposed agreements, is not available. However, the record contains a copy of a letter of January 17, 1962 from the National Bank of Cuba to Wintrade advising it of the following: As of January 11, 1962 the balance of the October 14, 1960 loan secured by the sugar was reduced to \$349,731.00; and on January 12, 1962 the Cuban Ministry of Industry Consolidated Sugar Enterprise paid that balance to the National Bank of Cuba as final liquidation of the loan.

Upon consideration of the entire record, the Commission finds that the 377,943 bags of sugar belonged to Wintrade on the date of loss, and that M. GOLODETZ & CO. had no interest therein. Accordingly, the claim of M. GOLODETZ & CO., Claim No. CU-1820, based upon the asserted ownership and loss of the 377,943 bags of sugar is denied in its entirety.

NATIONALIZATION

As already noted, Cuba commenced interfering with Wintrade's sugar operations early in 1960. On October 14, 1960 the Cuban Government compelled Wintrade to liquidate its debt to Chase Manhattan Bank and to secure a loan from the National Bank of Cuba, pledging the sugar as security. From that date until 1962, Cuba sold the sugar. The said letter of January 17, 1962, from the National Bank of Cuba, indicates not only that the debt secured by the sugar had been reduced to \$349,731.00, but also that only 77,718 bags of sugar remained as security for that reduced balance of the loan. It is clear that the rest of the original 377,943 bags of sugar had been sold by Cuba, and by January 12, 1962 all of the sugar had been sold. Claimants state that Cuba took the sugar between October 14, 1960 and January 12, 1962.

On the basis of the entire record and in the absence of evidence to the

contrary, the Commission finds that Wintrade's 377,943 bags of sugar were taken by the Government of Cuba on October 14, 1960.

Since Wintrade 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

STOCK INTERESTS IN WINTRADE

The evidence establishes and the Commission finds that Claimants owned the following stock interests in Wintrade:

EFIM GOLODETZ (Claim No. CU-1816)—60 shares of stock at all pertinent times.

LEO ELIASH (Claim No. CU-1818)—900 shares of stock since March 7, 1966.

INTERCONTINENTAL AFFILIATES (Claim No. CU-1819)—2,820 shares of stock at all pertinent times.

It appears from the record that all stock certificates remained in Cuba and are unavailable.

As quoted above, the express provisions of Section 504 (a) of the Act limits the allowance of any claim against Cuba to the extent only that the claim has been owned by a national or nationals of the United States from the date it arose until the date of filing with the Commission.

The foregoing provisions of Section 504(a) of the Act present an issue with respect to Claim No. CU-1818, Claim of *LEO ELIASH*.

Pursuant to an agreement of October 3, 1950, an irrevocable trust was created by the late Simon Golodetz. Insofar as Claim No. CU-1818 is concerned, the trust *res* consisted of 900 shares of stock in Wintrade. Four beneficiaries were named by the grantor, two of whom being American nationals and two being British nationals.

Paragraph "THIRD" of the agreement conferred upon the Trustees authority to pay the net profit and income from the trust property "for the benefit of such of the Beneficiaries and in such *proportions* as the Trustees in their absolute discretion shall determine, in at least annual installments." The trust was to terminate on the death of the survivor of DAVID GINZBERG and OSCAR GOLODETZ. However, if all of the beneficiaries predeceased said survivor, the trust was to terminate, and the balance of all income and principal was to be paid "in equal shares per stirpes to the issue of the Beneficiaries named herein surviving the Survivor."

On the other hand, if the survivor predeceased any surviving beneficiary, the trust was to terminate and the balance of all income and principal was to be paid by the Trustees "to and among such of the Beneficiaries and in such proportions as the Trustees in their absolute discretion shall duly nominate, direct and appoint by deed." The agreement further provided that if the Trustees failed to make such payment within 120 days after the death of the survivor, the Trustees were to pay the balance "in equal shares per

stirpes to such of the Beneficiaries as shall survive the Survivor and to the issue surviving the Survivor of such of the Beneficiaries as shall not survive the Survivor."

The Trustees were further authorized "to pay to or use and apply for the benefit of any Beneficiary such portion or portions of the principal as the Trustees in their absolute discretion may deem proper." Upon doing so, the trust was to terminate *pro tanto*, but was to apply only to the remaining principal and income. Provision was also made for the replacement of any Trustee due to death, resignation or incapacity.

The record shows that no part of the trust principal (900 shares of stock in Wintrade) was ever distributed prior to March 7, 1966 when all of the 900 shares were duly transferred to LEO ELIASH, a national of the United States. The question thus presented is the identity of the owner or owners of the 900 shares of stock from October 14, 1960, the date of loss, to March 7, 1966, so that it is clear whether the 900 shares of stock or any Part thereof were owned by nationals of the United States at all pertinent times in conformity with the prerequisites of Section 504(a) of the Act.

This issue was discussed with counsel for claimants who contended that the trust property at all times was owned by nationals of the United States. Accordingly, the Commission suggested the submission of evidence in support of counsel's contention. Counsel's response was in the form of a detailed letter of May 11, 1971.

Counsel proceeds with his argument by reciting that the Trustees—EFLI_M GOLODETZ, JOACHIM GINZBERG and Alexander Golodetz—have been United States nationals at all pertinent times. He states that Pursuant to the trust agreement the Trustees had "absolute and unfettered discretion" to distribute the income and the corpus to any one or more of the four beneficiaries. Counsel adds that the only beneficiary to whom the income was ever distributed is LEO ELIASH, an American, and that as of March 7, 1966 LEO ELIASH became the owner of the 900 shares of stock in Wintrade.

Based upon the foregoing, counsel contends that the two British beneficiaries never owned either a legal or equitable interest in the 900 shares of stock at any time. In effect, counsel contends that from October 14, 1960 until March 7, 1966 the 900 shares were owned by the Trustees.

In support of his contentions, counsel states that paragraph "Tenth" of the trust provides that the trust shall be construed according to the law of New York and cites a New York case as controlling in resolving the issue, namely, *Hamilton v. Drogo*, 241 N.Y. 401,404, 150 N.E. 496 (1926).

According to counsel, the trust involved in that New York case conferred upon the trustees absolute discretion to pay income from the trust to any one of several named beneficiaries to the exclusion of any other. The case thus involved the question "whether the Court could interfere with the trustees' discretion and compel them to allot income to a 'beneficiary' to whom they had decided not to make such an allotment." Counsel states that the court held unequivocally that the decision of the trustees was final and could not be changed by the courts. Counsel construes the decision to mean that the "beneficiary" in question had no legal or equitable interest in the income unless and until the trustees made an allotment to him.

On the basis of that decision, counsel contends that the 900 shares of stock in Wintrade were owned by nationals of the United States at all pertinent times. He states that the Trustees herein in their discretion had allotted income from the trust only to LEO ELIASH, an American, and that prior

to the date of filing with the Commission the Trustees had distributed the 900 shares to LEO ELIASH. Accordingly, counsel concludes that the two British beneficiaries never owned any legal or equitable interest in the shares of stock. He therefore urges the Commission to find that the 900 shares were at all pertinent times owned by nationals of the United States.

Upon consideration of the entire record, the Commission is constrained to reject counsel's contentions. The Commission finds that the *Hamilton v. Drogo* case stands for the proposition that a court may not substitute its discretion for that of trustees in whom absolute discretion is vested; nor may the court compel such trustees to exercise their discretion in a certain manner. However, that case does not support counsel's contention that the two British beneficiaries had no legal or equitable interest in the 900 shares of stock.

As noted above, the agreement of October 3, 1950 provided that the Trustees in their sole discretion could distribute the income and corpus to any one or more of the beneficiaries. There is nothing in that agreement to authorize the Trustees to distribute any part of the income or the corpus to themselves under any conditions. It is therefore clear beyond peradventure of doubt that none of the Trustees owned any interest, legal or equitable, in any income or principal of the trust property, and the Commission so finds. The Trustees merely held the bare legal title to the 900 shares of stock, and their sole interest therein was to distribute the income and the principal of the trust property to one or more of the beneficiaries pursuant to the provisions of the agreement.

The Commission notes the statements of claimants and counsel that the only person to whom income from the trust was ever allotted is LEO ELIASH. The record in Claim No. CU-1818 includes copies of accounting reports concerning the trust for the fiscal period October 1, 1959 to September 30, 1960.

However, and in any event, the status of the income from the trust has no bearing on ownership of the corpus of the trust. The Commission has held consistently that the beneficial owner of the claim, and not the ostensible or nominal holder, is the proper party claimant in a proceeding under the International Claims Settlement Act of 1949, as amended. (See the *Claim of Florida National Bank and Trust Co. at Miami, Adm. c.t.a. of the Estate of Francisco Hidalgo Gato, Deceased*. Claim No. CU-0587; and see also *Settlement of Claims by FCSC 45* (September 14, 1949 to March 31, 1955); FCSC Dec. & Ann. 312, 389, 589-593 (1968).)

Upon full consideration of this matter, the Commission finds that on October 14, 1960, the date of loss, and from that date until March 7, 1966, the equitable interest in the 900 shares of stock in Wintrade was owned by the beneficiaries in equal shares. Since there were four beneficiaries, including two British nationals—Michael Golodetz and Lionel Golodetz—the Commission finds that a 50% interest in the trust property was beneficially owned by nonnationals of the United States.

Accordingly, the Commission finds that 450 of the 900 shares of stock in Wintrade, upon which LEO ELIASH's claim is based, were beneficially owned by nonnationals of the United States on October 14, 1960, the date of loss. Pursuant to the express provisions of Section 504(a) of the Act, the portion of LEO ELIASH's claim based upon said 450 shares of stock in Wintrade cannot be considered. Therefore, this portion of his claim is denied.

(See *Claim of Sigridar Einarsson*, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

VALUATION

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 a 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.

It is noted that no claim is being made for any other asset of Wintrade, except the 377,943 bags of sugar. Counsel's memorandum accompanying his letter of May 12, 1971, and statements from the claimants, indicate that Wintrade owned other assets in Cuba. It appears, however, that claimants have no evidence to establish either the precise nature of such property or its value, and therefore have made no claim for such other assets of Wintrade. The record shows that Wintrade owned certain assets in the United States, which could not have been taken by the Government of Cuba. In connection with such assets, the record indicates that application was made by claimants to the Foreign Assets Control, United States Treasury Department, to unblock such assets which was granted in part.

It further appears from the evidence of record that Wintrade owned a 100% stock interest in Atlantic Warehouse & Transportation Co., a Cuban corporation; and that INTERCONTINENTAL AFFILIATES (Claim No. CU-1819) owned a 100% stock interest in West Indies Commercial Co., S.A., also a Cuban corporation, both of which corporations were assertedly taken by the Government of Cuba. However, no claims are being made for these stock interests due to the lack of evidence.

Accordingly, the only asset of Wintrade to be considered in reaching its net worth is the sugar.

The record shows that each of the 377,943 bags of sugar contained 250 pounds. The evidence also establishes that the Cuban authorities had fixed the price of sugar intended for foreign consumption at \$0.0325 per pound which is the amount being claimed.

On the basis of the evidence of record, the Commission finds that each bag of sugar had a value of \$8.125 and that the aggregate value of the 377,943 bags on October 14, 1960 was \$3,070,786.88. However, as already indicated, Wintrade owed a debt of \$2,183,299.25 in connection with the sugar. Therefore, Wintrade's equity in the sugar amounted to \$887,487.63. Since Wintrade had 4,140 shares of outstanding capital stock on the date of loss, each share had a value of \$214.369. Accordingly, claimants sustained the following losses:

EFIM GOLODETZ—Claim No. CU-1816

60 shares § 12,862.14

LEO ELIASH—Claim No. CU-1818

450 shares ----- \$96,466.05

INTERCONTINENTAL AFFILIATES—Claim No. CU-1819

2,820 shares ----- -\$604,520.58

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 EFIM GOLODETZ 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 Twelve Thousand Eight Hundred Sixty-two Dollars and Fourteen Cents (\$12,862.14) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

The Commission certifies that LEO ELIASH 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 Ninety-six Thousand Four Hundred Sixty-six Dollars and Five Cents (\$96,466.05) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission, certifies that LEO ELIASH, JOACHIM GINZBERG, EFIM GOLODETZ, MARC L. GINZBERG, OSCAR GINZBERG, DAVID GINZBERG, and ISAAC SUDER d.b.a. INTERCONTINENTAL AFFILIATES 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 Six Hundred Four Thousand Five Hundred Twenty Dollars and Fifty-eight Cents (\$604,520.58) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission August 11, 1971.

IN THE MATTER OF THE CLAIM OF INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, INDIVIDUALLY AND AS TRUSTEE

Claim No. CU-2615—Decision No. CU-5013

Losses sustained by a United States corporation which became defunct after the loss, may be certified to a majority stockholder as trustee for the benefit of non-claimant stockholders and creditors.

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 \$61,089,234.00, was presented by INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, based upon asserted losses resulting from the nationalization of the Cuban Telephone Company and properties of its

subsidiaries as well as debts of nationalized enterprises. Subsequently separate claims were opened for five United States subsidiaries of the INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION for their losses which originally had been included in this claim. The remainder now represented by this claim amounts to \$57,306,561.00.

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.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, hereafter referred to as ITT, was organized under the laws of the State of Maryland. An officer of claimant corporation has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States and on August 6, 1970, 7.319% of the shares of ITT stock outstanding was held by or for the account of aliens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The claim as originally filed was for \$61,089,234.00 as follows:

Nationalization of Cuban Telephone Company (hereinafter called "Cutelco")	\$53,309,525.00
Nationalization of Equipos Telefonicos Standard de Cuba	1,042,000.00
Expropriation of Havana and Santiago Properties of All American Cables K Radio, Inc.	254,235.00
Loss of Obligations Owed to ITT and Subsidiaries	6,475,960.00
Loss of Cuban Patents	7,514.00

Inasmuch as Section 505 (a) of the Act provides, *inter alia*, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered, five of the ITT subsidiaries which are nationals of the United States subsequently filed separate claims for their losses, Claim Nos. CU-8290 through CU-8294. Consequently, this claim is for the following losses:

A. Nationalization of Cutelco	\$53,309,525.00
B. Obligations owed by Cutelco	3,347,022.00
C. Obligations owed to the Kellogg Division of ITT by Equipos	642,500.00
D. Loss of Patent Rights	7,514.00
Total	\$57,306,561.00

NATIONALIZATION OF CUTELCO

Claimant, which as above noted is a United States corporation, owned on August 6, 1960, the date of its nationalization, 258,685 shares of the common stock out of 482,805 shares of the total outstanding capital stock of Cutelco. Claimant's asserted losses in this connection now total somewhat less than the above figure computed by the Commission of \$57,306,561.00, i.e., \$56,656,547.00.

The record establishes that Cuban Telephone Company (Cutelco) was organized under the laws of the State of Delaware in 1908 and that it is no longer in good standing, having been declared inoperative and void by the Secretary of State for the State of Delaware. Accordingly, the Commission holds that claimant may file a claim based upon its ownership interest in the enterprise.

Evidence presented to the Commission reveals that Cutelco was granted a concession to establish a telephone system in Cuba which concession was later incorporated into a contract between Cutelco and the Cuban Government for providing telephone service throughout the Republic of Cuba. On March 14, 1957 a new concession agreement was entered into which required a large expansion of telephone facilities and an increased investment of nearly \$66,000,000.00. By March 1, 1959 Cutelco had 171,434 telephones installed and operating with 4,929 employees and \$17,298,000.00 worth of construction work in progress and materials on hand. Telephone service was conducted from 162 central offices interconnected by a distribution system having approximately 326,463 miles of wire in underground cable, 159,109 miles in aerial cable, 31,900 miles of open wire and 3,795 miles of pole lines.

On August 6, 1960, the Government of Cuba announced its Resolution No. 1, pursuant to Law 851 of July 6, 1960, which listed as nationalized the Cuban Telephone Company and its affiliated enterprises. Accordingly, the Commission finds that its property in Cuba was nationalized on August 6, 1960 by the Government of Cuba.

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 placement.

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.

Evidence available to the Commission includes an appraisal of the tangible property of Cutelco, balance sheets as of December 31, 1957, 1958 and 1959, and a balance sheet as of May 31, 1960 using adjusted values for assets on the basis of the appraisal.

The appraisal gives the following values for Cutelco's tangible assets as of May 31, 1960:

<i>Property</i>	<i>Replacement Cost</i>
Land and Land Improvements	\$ 3,327,227.00
Buildings	9,532,547.00
Central Office Equipment	49,607,446.00
Station Telephone Apparatus	7,886,615.00
Station Installation	6,171,542.00
Special Station Equipment	394,886.00
Private Branch Exchanges	3,983,128.00
Booths and Special Fittings	121,683.00
Exchange Pole Lines	4,623,501.00
Exchange Aerial Cable	8,406,356.00
Exchange Aerial Wire	1,125,007.00
Exchange Conduit	10,070,888.00
Exchange Underground Cable	17,924,710.00
Exchange Submarine Cable	3,932.00
Exchange Right of Way	137,402.00
Toll Pole Lines	13,201,854.00
Toll Aerial Cable	118,207.00
Toll Aerial Wire	9,451,958.00
Toll Conduit	301,982.00
Toll Underground Cable	1,005,482.00
Toll Submarine Cable	22,125.00
Toll Right of Way	457,395.00
Furniture & Office Equipment	1,150,373.00
Shop Equipment	46,027.00
Storeroom Equipment	65,802.00
Transportation Equipment	994,717.00
General Tools	663,275.00
Construction Work in Progress	8,010,097.00
Total Plant	\$158,716,164.00
Depreciation to be deducted	34,347,466.00
Total Replacement Cost Less Depreciation	\$124,368,698.00

The May 31, 1960 balance sheet, including the appraised valuations and certain other adjustments explained below, is as follows:

<i>ASSETS</i>		
Plant, Property & Equipment	\$158,716,164.00	
Reserve for Depreciation	34,347,467.00	\$124,368,697.00
<u>Construction Materials</u>		<u>2,214,185.00</u>

Current Assets		
Cash	\$	230,580.00
Accounts Receivable		3,346,747.00
Material & Supplies		3,051,201.00
		6,628,528.00
Receivables from Cuban Federal, Provincial and Municipal Governments		
		1,117,026.00
Deferred Charges		1,095,938.00
	Total	\$135,424,374.00

CAPITAL AND LIABILITIES

Preferred Stock—6% cuml. par value \$100		
Issued and outstanding—87,805 shares	\$	8,780,500.00
Common Stock—par value \$100 per share		
Issued and outstanding—395,000 shares		39,500,000.00
Earned Surplus		2,293,274.00
Appraisal Surplus		31,284,099.00
		\$ 81,857,873.00
Long Term Debt		
4% Debentures, Series A, due 1965	\$	6,000,000.00
4% Debentures, Series B, due 1973		9,000,000.00
6% Notes		17,058,200.00
		\$ 32,058,200.00
Current Liabilities		
6% Notes	\$	8,836,700.00
Notes Payable		4,225,100.00
Accounts and Wages Payable		1,411,187.00
Accrued Taxes, interest, unpaid dividends on preferred stock		3,331,559.00
Amounts owing to ITT and subsidiaries		3,215,198.00
Advance Billings		488,557.00
	Total	\$135,424,374.00

The Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in Cutelco's May 31, 1960 balance sheet, subject to the adjustments noted below. This claimant, in listing certain of its current assets and current liabilities, had converted pesos into dollars at the rate of 3:1. The Commission, however, has consistently held that the peso was on a par with the dollar on January 1, 1959, when the Castro regime came into power, and this conversion factor has been retained throughout the Cuban claims program, irrespective of day-to-day currency fluctuations. Consequently, appropriate adjustments have been made in the dollar amounts set forth above for "Current Assets" and "Current Liabilities" and an offsetting entry called "Revaluation Surplus \$8,323,643.00" has been deleted. On that basis, the net worth of Cutelco on August 6, 1960 is determined to have been \$81,857,873.00.

In addition, to arrive at a proper value for the common stock it is necessary to deduct the fair value of the outstanding preferred stock which the Commission finds had a value of \$9,175,622.50, consisting of the par value

plus \$395,122.50 for unpaid dividends. Thus, the loss sustained by the common stockholders for their equity in the net worth amounted to \$72,682,250.50 and the loss per share for each of the 395,000 shares of common stock outstanding on August 6, 1960 was \$184.0057.

The Commission concludes that claimant, as a holder of 258,685 shares of common stock of Cutelco, sustained a loss as a result of the taking of the assets of that Company by the Government of Cuba on August 6, 1960 in the amount of \$47,599,514.50 within the meaning of Title V of the Act.

DEBTS OWED BY CUTELCO

Claimant asserts a claim herein also for the amount of \$3,347,022.00 for obligations owed it by Cutelco.

The statute precludes the assertion of unsecured claims against a United States corporation. However, Cutelco, being defunct, is no longer in that category. It would obviously be inequitable to deprive creditors of their remedy where the debtor is a corporation organized in the United States but is no longer in existence. Inasmuch as Cutelco's assets have been nationalized and are being used by the Government of Cuba, creditors should be entitled to file claims herein and the Commission so holds.

The obligations claimed are as follows:

Billed Receivables		\$ 583,077.00
Amounts Due, Unbilled		640,498.00
Underbilling due to clerical errors		234,545.00
Engineering Charges Unbilled		69,316.00
Obsolete & Excess Inventory Scrapped		
Existing orders	\$ 69,686.00	
Inventories stocked	610,000.00	
Canceled orders for Parts	112,067.00	791,753.00
1959 Management Service Contract		900,000.00
Payment of Salaries, Expenses, etc. for Cutelco Employees		102,833.00
Compensation to Former Cutelco Employees for Loss of Personal Effects		25,000.00
	Total	\$3,347,022.00

Claimant has submitted copies of its accounting records, inter-office memoranda and copies of agreements with Cutelco regarding management services. On the basis of the evidence of record, the Commission holds that claimant sustained a loss in the amount of \$2,427,436.00 for debts owed by Cutelco on August 6, 1960 for materials, engineering charges and management services as a result of the nationalization of the assets of Cutelco.

A finding of loss for the obsolete and excess inventory as a result of the nationalization of Cutelco's assets is not warranted by evidence of record. A portion of the inventory resulted from the cancellation of a contract by Cutelco because of nondelivery of the contracted items due to a strike at the factory; some inventory was added because of expected orders from the company in Cuba; and an indeterminate amount was sold as scrap by claimant. Accordingly, this portion of the claim is denied.

Claimant also asserts the loss of a total amount of \$127,833.00 for payment of salaries, expenses and compensation for personal losses of Cutelco em-

ment of claim of the Cutelco employees to whom compensation was assertedly made. Therefore, this part of the claim must also be denied.

The Commission concludes that claimant sustained an additional loss in the amount of \$2,427,436.00 for debts owed as a result of the nationalization of the assets of Cutelco on August 6, 1960 within the meaning of Title V of the Act.

DEBTS OF EQUIPOS TELEFONICOS STANDARD DE CUBA

A portion of the claim in the amount of \$624,500.00 is based upon certain debts owed to the Kellogg Division of claimant for electrical equipment shipped and services rendered to Equipos Telefonicos Standard de Cuba, a Cuban enterprise in Havana, Cuba. The record shows that Equipos Telefonicos Standard de Cuba was nationalized by the Government of Cuba on August 6, 1960 by Resolution 1, pursuant to Law 851 of July 6, 1960.

The record contains a balance sheet of Equipos as of December 31, 1960, copies of the accounting records of the Kellogg Division of ITT, and affidavits of officials of ITT which reflect a debt owed to claimant by Equipos on August 6, 1960 of \$642,499.38 for electrical equipment and engineering services.

Based upon all the evidence of record, the Commission finds that ITT sustained a loss in the amount of \$642,499.38 within the meaning of Title V of the Act as a result of the nationalization of Equipos Telefonicos Standard de Cuba by the Government of Cuba on August 6, 1960.

PATENTS

Claim is also asserted for the loss of 34 patents valued at \$7,514.00. The record contains an affidavit by the Director of Licensing of ITT stating that there were 34 patents active in Cuba relating to telephone switching apparatus and equipment which cost an average of \$221.00 each for filing and other expenses. Claimant contends that the right to exploit these patents in Cuba through its subsidiaries has been lost through the actions of the Cuban Government in its nationalization of the Cuban Telephone Company and its associated companies on August 6, 1960. It has submitted no evidence, however, concerning the value of the said patents, or the right to exploit the same, and has confined its claim solely to its filing costs.

The Commission finds that ITT sustained a loss in the amount of \$7,514.00, the fair value of the above-mentioned patents, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, as a result of the said nationalization on August 6, 1960.

CERTIFICATION FOR UNCLAIMED ASSETS

As previously set forth, the total assets of Cutelco amounted to \$135,424,374.00 at the time they were nationalized by the Cuban Government. From the record, it is determined that claims, other than the instant claim, have been filed which involve the interests of other creditors, preferred stockholders and common stockholders in the amount of \$5,394,629.36. This amount with the total amount herein certified as lost by ITT through the nationalization of Cutelco's assets totals \$55,421,579.86, leaving a balance of the assets not claimed before this Commission in the amount of \$80,002,794.14.

Accordingly, a certification of loss in the amount of \$80,002,794.14 is made to ITT, in trust for the benefit of non-claimant shareholders and creditors of

Cutelco. The distribution of such a trust is to be made in accordance with the laws of the State of Delaware and Title V of the International Claims Settlement Act of 1949, as amended, preference to be given to creditors, preferred stockholders and common stockholders in that order, and the qualifications as to nationality to be observed. The distribution is to be made on the same pro rata basis as employed in determining any payment made to successful claimants against the Government of Cuba.

INTEREST

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 INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION 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 Fifty Million Six Hundred Seventy-six Thousand Nine Hundred Sixty-three Dollars and Eighty-eight Cents (\$50,676,963.88) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement; and

The Commission certifies that INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AS TRUSTEE for the benefit of non-claimant shareholders and creditors of Cutelco 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 Eighty Million Two Thousand Seven Hundred Ninety-four Dollars and Fourteen Cents (\$80,002,794.14) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

Dated at Washington, D.C., June 17, 1970.

IN THE MATTER OF THE CLAIM OF AETNA INSURANCE COMPANY

Claim No. CU-2363—Decision No. CU-6804

Under international law, decrees of Cuba may not be given extraterritorial effect.

PROPOSED DECISION *

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$173,040.27, was presented by AETNA INSURANCE COMPANY based upon the asserted loss of certain 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 503(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.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any States, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Connecticut and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that on or about April 25, 1967, 90 shares of its outstanding capital stock of one million shares, or .009%, were owned by nonresidents of the United States and that 99.991% was owned by United States residents (Exhibit P). The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

Claimant asserts the following losses:

4% bonds of the Republic of Cuba, 1953-1983 -----	\$95,000.00
4% bonds of the Republic of Cuba, Bank Consolidation, 1960-1990 -----	5,100.00
Cash deposited with Cuban Treasury Department (\$13,- 182.55 plus \$4,592.10) -----	17,774.65
Bank account -----	55,165.62
Total -----	<u>\$173,040.27</u>

The record shows that claimant conducted an insurance business in Cuba through a Cuban entity which acted as its agent. In order to qualify for a license to do business in Cuba, claimant was required to deposit with the Cuban authorities collateral as a guarantee that it would meet its obligations. Claimant made the following deposits in 1959 for which it was given official receipts by the Cuban Ministry of the Treasury:

1. 19 bonds of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works, 1953-1983, each in the amount of \$1,000.00; 50 shares of stock in Financiers National of Cuba in the amount of \$100.00 each; and \$1,000.00 in cash, for an aggregate deposit of \$25,000.00—Receipt No. 23347 (Exhibit F).

2. 56 bonds of the same issue as above, each in the amount of \$100.00; and \$19,000.00 in cash, for an aggregate deposit of \$75,000.00—Receipt No. 23348 (Exhibit G).

3. 20 bonds of the same issue as above, each in the amount of \$1,000.00; and cash in the amount of \$5,000.00, for an aggregate deposit of \$25,000.00—Receipt No. 23349 (Exhibit H).

Pursuant to Law No. 685 of August 17, 1960, *Financiera Nacional de Cuba* was liquidated and all obligations thereof were assumed by the Government of Cuba. (See *Claim of Phoenix Insurance Company*, Claim No. CU-1913.) Subsequently, the stockholders of the liquidated entity were offered the opportunity to exchange their shares of stock for 4% bonds of an issue known as Republic of Cuba Consolidated and Guaranteed Debt of the Bandes, 1960-1990 (Exhibit L). Claimant accepted the offer and received Certificate No. M-564, dated February 21, 1961, representing a bond of that issue in the face amount of \$5,000.00 as well as Certificate No. C-342, dated February 21, 1961, representing a bond of the same new issue in the face amount of \$100.00 (Exhibits M and N), the latter apparently on account of dividends due on the 50 shares of stock that were exchanged.

Claimant's Cuban agent deposited the new \$5,000.00 bond with the Cuban Treasury Department, and in lieu of Receipt No. 23347, he was given Receipt No. 89 of March 10, 1961 (Exhibit I) which was identical with the earlier one except that it showed \$5,000.00 of bonds of the new issue instead of 50 shares of stock. The new bond for \$100.00 was retained by the Cuban agent.

As a result of these transactions, claimant had on deposit bonds of the 1953-1983 issue aggregating \$95,000.00; cash in the amount of \$25,000.00; and a bond of the 1960-1990 issue in the amount of \$5,000.00. In addition, claimant's Cuban agent held a bond of \$100.00 of the 1960-1990 issue; and further claimant owned a bank account at the Trust Company of Cuba which was later transferred to the National Bank of Cuba, discussed below.

It appears from the evidence of record that claimant had issued two insurance policies covering property of Pedro Menendez, a Cuban national, in Cuba. Menendez suffered certain losses in 1958 and 1959 apparently within the scope of the insurance policies. Subsequently, Menendez came to the United States and sued claimant for his losses, which suit is discussed hereafter.

On April 7, 1959, the Cuban Government published in its Official Gazette an announcement that Menendez's properties had been confiscated and now belong to Cuba (Exhibit D). The record includes a copy of part of claimant's answer to the Menendez suit, showing claimant's principal grounds of defense (Exhibit C). By letter of October 14, 1959, the Cuban Government served notice on claimant's Cuban agent of said confiscation and demanded payment for the losses of Menendez under the insurance policies (Exhibit C, p. 18). On January 8, 1960, the Cuban Government notified claimant's Cuban agent that in view of claimant's failure to pay Cuba for the said losses of Menendez in the amount of \$65,420.90, it had ordered the seizure of \$75,000.00 of claimant's bonds; and had suspended claimant's license to do business in Cuban until claimant restored its deposits to status quo (Exhibit C, pp. 19-22).

Claimant states that on March 30, 1960 Cuba seized the bonds, sold them and kept the proceeds (Exhibit B). The record shows, however, that the Cuban Treasury Department issued Receipt No. 23742 on February 2, 1960 indicating a deposit of \$7,182.55 in favor of claimant (Exhibit O). In analyz-

ing these circumstances, claimant states under date of October 20, 1967, that Cuba took the 56 bonds and the \$19,000.00, represented by Receipt No. 23348, and returned \$7,182.55 thereof. On the basis of that assumption by claimant, it asserts in part, a loss of cash in the amount of \$13,182.55, representing \$1,000.00 (Receipt No. 89), 5,000.00 (Receipt No. 23349), and \$7,182.55 (Receipt No. 23742). Another amount of cash assertedly on deposit with Cuban authorities in the amount of \$4,592.10 is discussed below.

The record shows that Menendez, the insured, instituted suit in the Federal courts against claimant, seeking to recover for his losses pursuant to the insurance policies issued by claimant. The principal defenses pleaded by claimant are: that Cuba owns the insurance claim as a result of the confiscation of Menendez's properties (Exhibit D) ; and that Cuba's claim in this respect has been fully satisfied and discharged as evidenced by a release executed by the Cuban Government (Exhibit C, pp. 13-17).

It appears from Exhibit Q that Menendez suffered two losses, one on November 20, 1958 in the amount of \$60,592.10, and the other on January 20, 1959 in the amount of \$4,828.80, aggregating \$65,420.90, the amount taken by Cuba from the proceeds of claimant's seized bonds. It further appears that while both losses were covered by policies issued by claimant, Menendez is suing only for the loss of \$60,592.10. On the basis of the foregoing, claimant has augmented its claim by that amount. Claimant states that Cuba took 56 bonds with a value of \$56,000.00, plus \$4,592.10 in cash, aggregating \$60,592.10. Since the \$56,000.00, in bonds is already included in its claim for 95 bonds of \$1,000.00 each, claimant asserts the loss of \$4,592.10 in cash. Claimant states that if it is successful in defending the suit by Menendez, its claim will be reduced by \$60,592.10 (Exhibit B).

It appears to be undisputed that Menendez suffered losses in the aggregate amount of \$65,420.90. This fact is confirmed by claimant's Exhibit Q. Therein claimant lists the two policies issued in favor of Menendez, the dates when the insured sustained the losses, and the amounts thereof attributable to each policy. Claimant acids: "Mr. Menendez is suing us only for the first listed loss, and that is all we are claiming (\$60,592.10)."

The record shows that Menendez's suit against claimant was first dismissed and upon ultimate appeal to the United States Supreme Court, the case was remanded to the United States Court of Appeals (*Aetna Insurance Co. v. Menendez*, 376 U.S. 781 (1964).) In turn, the United States Court of Appeals remanded the case to the District Court. (*Menendez v. Aetna Insurance Co.*, 340 F. 2d 708 (1965).) The Commission is advised that generally the courts of the United States have held in favor of the Cuban insureds in similar circumstances. (*Blanco v. Pan-American Life Ins. Co., et al.*, 221 F. Supp. 219 (S.D. Fla. 1963).) Under date of June 2, 1971, claimant informed the Commission that a decision had been entered in favor of Menendez and that claimant's attorneys were proceeding with an appeal.

A copy of the decision in favor of Menendez was forwarded to the Commission under date of July 19, 1971. The decision recites that the situs of the insurance claim against claimant was not Cuba; that the court could not give to Cuba's expropriation decree against Menendez's property because that would be tantamount to giving extraterritorial effect to Cuba's decrees; that the "Act of State" doctrine, therefore, did not apply in this case; and that Menendez was entitled to judgment. It further appears that Pedro Menendez died on September 27, 1969 and that the Administrator, C.T.A. of his estate was substituted as party plaintiff.

A communication of July 13, 1971, from claimant's counsel states that on June 22, 1971 the United States Court of Appeals for the Fifth Circuit affirmed the judgment in favor of Menendez. Counsel further advised that on July 6 1971 a petition for rehearing was filed with the Appellate Court, which has not yet acted upon it.

Upon consideration of the foregoing in light of the entire record, the Commission finds that on March 30, 1960 the Government of Cuba took claimant's property aggregating \$75,000.00 in value. While the earlier deposit by Cuba of \$7,182.55 in favor of claimant is not explained, it nevertheless served to reduct claimant's loss of March 30, 1960 *pro tanto*. Therefore, the Commission finds that claimant sustained a loss of \$67,817.45 on March 30, 1960.

BONDS OF THE 1953-1983 ISSUE

On the basis of the evidence of record, the Commission finds that claimant originally owned 95 bonds of the 1953-1983 issue in the aggregate face amount of \$95,000.00. Records available to the Commission disclose that the Cuban Government first defaulted in the payment of interest on these bonds on May 1, 1961. (See *Claim of Weschester Fire Insurance Company*, Claim No. CU-1703.) The Commission has held that such a default gave rise to a claim under Title V of the Act. (See *Claim of Clemens R. Maine*, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

Based upon the entire record and in the absence of evidence to the contrary, the Commission finds that the bonds in question had a value of \$1,000.00 each of May 1, 1961, the (late of loss.

The Commission finds that on March 30, 1960 Cuba seized \$75,000.00 in bonds, represented by Receipt No. 23348 (56 bonds) and Receipt No. 89 (19 bonds), as noted above. The Commission further finds that on May 1, 1961, the date of loss, claimant owned 20 bonds of the 1953-1983 issue having an aggregate value of \$20,000.00.

BONDS OF THE 1960-1990 ISSUE

The evidence establishes and the Commission finds that claimant owned Republic of Cuba bonds of the 1960-1990 issue in the face amount of \$5,100.00. As already noted, claimant acquired these bonds in 1961 as a result of an exchange involving 50 shares of stock in Financiera Nacional de Cuba formerly owned by claimant.

Law 989, published in the Cuban Official Gazette on December 6, 1961 by its terms effected the confiscation of all bonds, rights and other property of persons who left Cuba or American firms no longer doing business in Cuba. The Commission finds that this law applied to claimant, and that its rights with respect to the bonds xvere taken by Cuba on December 6, 1961 pursuant to Law 989. (See *Claim of Wallace Tabor, et al., infra*, and *Claim of Boyar & Crawford, infra.*) Accordingly, the Commission finds that claimant sustained a loss of \$5,100.00 on December 6, 1961.

CASH DEPOSITED WITH CUBAN TREASURY DEPARTMENT

Based upon the evidence of record, the Commission finds that claimant had no deposit with the Cuban Treasury Department cash in the amount of \$25,000.00 (Receipt Nos. 23348, 23349 and 89). The \$7,182.55, as shown by Receipt No. 23742, issued by the Cuban authorities without claimant's knowledge or consent has been accounted for above. The Commission therefore

finds that the Government of Cuba held \$25,000.00 in funds belonging to claimant.

In the absence of evidence to the contrary, the Commission finds that claimant's funds were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (*supra*; see *Claim of Floyd W. Auld*, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; *Claim of Wallace Tabor and Catherine Tabor*, Claim No. CU-0109, id. at 53; and *Claim of Boger & Crawford*, Claim No. CU-0037). Accordingly, the Commission finds that claimant sustained a loss of cash on December 6, 1961 in the amount of \$25,000.00.

BANK ACCOUNT

The evidence establishes that claimant owned a bank account at The Trust Company of Cuba which had been transferred to the National Bank of Cuba. Claimant asserts a loss of \$55,165.62 as shown in a copy of a bank statement as being the balance in its favor as of August 20, 1963 (Exhibit E). The record includes claimant's letter of January 22, 1962 to the State Department, in which claimant complained that it was unable to obtain any information concerning its bonds and cash on deposit with the Cuban Government and its account at a Cuban bank.

On the basis of the entire record, the Commission finds that claimant's bank account was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See *Auld* and *Boger & Crawford*, *supra*.)

The copy of the bank statement indicates that the account is inactive. The amount of \$55,167.37 as of June 17, 1963 appears as the previous balance, and the statement shows two subsequent entries—a bank service charge of \$3.00 on June 25, 1963, and a credit of \$1.25 as of August 19, 1963. Inasmuch as these two transactions occurred after December 6, 1961, they cannot affect the balance in claimant's favor on the date of loss.

On the basis of the entire record and considering the fact that the account had been inactive for some time, the Commission finds that the valuation most appropriate to the bank account and equitable to the claimant is that shown in the bank statement as the "previous balance" as of June 17, 1963. Accordingly, the Commission finds that the value of claimant's bank account on December 6, 1961 was \$55,167.37.

RECAPITULATION

Claimant's losses are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Proceeds of Bonds, 1953-1983	March 30, 1960	\$67,817.45
Bonds, 1953-1983	May 1, 1961	20,000.00
Bonds, 1960-1990	December 6, 1961	5,100.00
Cash with Cuban Government	December 6, 1961	25,000.00
Bank Account	December 6, 1961	55,167.37
	Total	<u>\$173,084.82</u>

The Commission has decided that in certification 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. CC-0644), and in the instant case it is so ordered as follows:

March 30, 1960	\$67,817.45
May 1, 1961	20,000.00
December 6, 1961	85,267.37
Total	<u>\$173,084.82</u>

CERTIFICATION OF LOSS

The Commission certifies that AETNA INSURANCE COMPANY suffered a loss, as a result of action 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 Seventy-three Thousand Eighty-four Dollars and Eighty-two Cents (\$173,084.82) 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 September 1, 1971.

IN **THE MATTER** OF **THE CLAIM** OF JENNIE M. **FULLER**, ET AL.

Claim No. CU-2803—Decision No. CU-6199

Discriminatory action by Cuba against an American gave rise to a claim under international law and Title V of the Act. The value of a death claim is measured by the amount of contributions the deceased would have made to his dependents.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$408,982.00, was presented originally by William Otis Fuller and JENNIE M. FULLER, nationals of the United States since birth, based on the loss of certain real and personal property in Cuba. In addition, claim is made for the death of their son. William Otis Fuller died intestate in Florida on December 1, 1969. Upon his death, his property interests were inherited in equal shares by his wife and six children and by his granddaughter, the daughter of his deceased son, Robert Otis Fuller, who died on October 16, 1960. Accordingly, the six children and granddaughter have been substituted as party claimants in the place of the late William Otis Fuller.

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.

⁴ This decision was entered as the Commission's Final Decision on June 24, 1971.

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 following losses are asserted:

Plantation at Holguin, Cuba, consisting of 68.994 cabal- lerias of land and improvements	\$358,982.00
Equipment, livestock and other items of personal property__	50,000.00
Total	*408,982.00

Claim is also made in an unstated amount for the death of Robert Otis Fuller, son of JENNIE M. FULLER and her late husband, William Otis Fuller.

The record shows that for a number of years prior to World War II JENNIE M. FULLER, her late husband, and other members of her family owned certain land in Holguin, Cuba. The claim of said relatives, Mr. and Mrs. Miles Chester Jewett, Claim No. CU-2804, will be decided on its own merits. The family operated a saw mill, raised cattle and crops and ultimately grew sugar cane.

On July 21, 1940, the family assets in Holguin, Cuba were transferred to a Cuban corporation, Cia. Agricola de Lewiston, S.A., expressly created for the purpose of carrying on the family business in Cuba. Originally, the total outstanding capital stock of the Cuban corporation was 355 shares but this was subsequently reduced to 235, distributed as follows: Mr. and Mrs. William Otis Fuller, 127 shares; and Mr. and Mrs. Miles Chester Jewett, 108 shares.

The Cuban corporation conducted its business until August 1959, when the Cuban National Institute of Agrarian Reform (I.N.R.A.) ordered the dissolution of the corporation. As of September 3, 1959, the Cuban corporation was formally dissolved, and its assets were distributed to its stockholders as follows: Mr. and Mrs. William Otis Fuller, 68.994 caballerias of land (1 caballeria equalling 33.162 acres) ; and Mr. and Mrs. Miles Chester Jewett, 58.730 caballerias of land. These land areas included improvements as indicated further below.

In December 1959, the late William Otis Fuller left Cuba, Mrs. Fuller remaining behind in Cuba. In February 1960 the I.N.R.A. authorities ordered Mrs. Fuller to exercise no further acts of ownership over the real property. She was permitted to remain at home, but could neither sell nor use any of the livestock without permission from the intervenor. Moreover, Mrs. Fuller was permitted to collect amounts due on behalf of the plantation, but was required to turn over the proceeds to agents of I.N.R.A. In June 1960, Mrs. Fuller could no longer perform even those ministerial acts.

On the basis of the entire record, the Commission finds that the entire plantation, including all of its improvements, as well as the livestock, personal belongings and other items of personal property situated on the plantation, were intervened or taken by the Government of Cuba in February 1960. In the absence of evidence to the contrary, the Commission finds that the taking occurred on February 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.

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.

PLANTATION

As noted above, the original claimants, William Otis Fuller and JENNIE M. FULLER, each owned a $\frac{1}{2}$ interest in 68.994 caballerias of land and improvements in Holguin, Cuba. Upon his death on December 1, 1969, the late Mr. Fuller's $\frac{1}{2}$ interest was inherited by the eight claimants herein in equal shares. Therefore, on February 15, 1960, the date of loss, Mrs. Fuller owned a $\frac{9}{16}$ interest, and each of the other seven claimants owned a $\frac{1}{16}$ interest.

Document No. 70, pursuant to which the Cuban corporation was dissolved, sets forth the assessed valuation for the several parcels of land and improvements that were distributed to the original two claimants as follows:

<i>Parcel No.</i>	<i>Area of Land (caballerias)</i>	<i>Assessed Value</i>
D	23.909	\$53,795.25
E	5.336	12,006.00
F	33.786	76,018.50
G	5.000	11,250.00
H	0.963	2,166.75
Totals	68.994	\$155,236.50

The Commission notes that assessed valuations invariably are much lower than fair market values. The evidence in this case includes an inventory filed with I.N.R.A. authorities on September 3, 1959, when the Cuban corporation was dissolved. That inventory sets forth the fair market values of the properties in question. Those valuations are relied upon by claimants.

It further appears that said valuations are supported by affidavits from: Silvestre Pina, former President of the National Executive Committee of the Association of Sugar Cane Owners of Cuba; Benjamin H. Leon, former bookkeeper for the Cuban corporation during the entire period of its existence; Juan Fernando Alvarez, former employee of the Cuban Treasury Department at the branch office at Holguin, Cuba; and Benjamin Santiesteban, former manager of the Holguin, Cuba branch of the Bank of Nunez. Further support for the valuations appearing in the inventory is found in the letter of April 6, 1966 from the late William Otis Fuller to the Internal Revenue Service. The record shows that tax deductions were allowed for the Cuban losses sustained by the deceased and JENNIE M. FULLER.

Based upon the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those

set forth in the inventory that was presented to the I.N.R.A. authorities.

Accordingly, the Commission finds that claimants' valuations are fair and reasonable. The Commission therefore finds that the values of the real properties on February 15, 1960, the date of loss, were as follows:

68.994 caballerias of land	\$311,495.00
Improvement on the land	47,487.00
Total	<u>\$358,982.00</u>

EQUIPMENT, LIVESTOCK AND OTHER PERSONAL PROPERTY

On the basis of the entire record, including the inventory filed with I.N.R.A. authorities and detailed lists of the equipment, livestock and other items of personal property, the Commission finds that claimants' valuations are fair and reasonable. The Commission therefore finds that the aggregate value of the equipment, livestock and other items of personal property on February 15, 1960, the date of loss, was \$50,000.00.

The losses herein sustained on February 15, 1960 are summarized as follows:

<i>Item of Property</i>	<i>Amount</i>
Plantation	\$358,982.00
Personal property	50,000.00
Total	<u>\$408,982.00</u>

Since JENNIE M. FULLER owned an 8/16 interest in the properties herein and succeeded to a 1/16 interest, aggregating 9/16, she sustained a loss in the amount of \$230,052.37. The other seven claimants succeeded to losses aggregating \$178,929.63, as follows:

IRENE JEWETT (FULLER) MOSS	\$ 25,561.38
FRANCES RUTH FULLER	25,561.38
JEANETTE OTIS (FULLER) HAUSLER	25,561.38
ANGELA GRACE (FULLER) LUTES	25,561.38
JEROME CAVERNO FULLER	25,561.37
FREDERICK JEWETT FULLER	25,561.37
LYNITA GAY FULLER	25,561.37
Total	<u>\$178,929.63</u>

DEATH CLAIM

Claim is made for the death of Robert Otis Fuller, son of the late William Otis Fuller and of JENNIE M. FULLER, as a result of his execution on October 16, 1960, by the Government of Cuba. Robert Otis Fuller was also survived by his daughter, LYNITA GAY FULLER. In a detailed narrative accompanying the official claim form, the original claimants stated in pertinent part as follows:

... On October 15, 1960, the son of the undersigned, Robert Otis Fuller, ex-U.S. Marine, was placed on trial in Santiago de Cuba for counter-revolutionary activities, Harvey Summ, State Department Officer being present. He was executed on the following day. Jennie M. Fuller left Cuba on the 17th of October 1960.

The record includes in support of this part of the claim, copy of a Report of the Death of an American citizen dated at Santiago de Cuba, Cuba.

October 19, 1960, and signed by G. H. Summ, American Consul. This document recites that Robert Otis Fuller was executed by a firing squad on October 16, 1960.

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

The Commission has held that in a disability claim under Section 503(b) of the Act, it must be established, *inter alia*, that the disability was the proximate result of actions by the Government of Cuba in violation of international law. (See *Claim of Julio Lopez*, Claim No. CU-3259.) The same considerations apply to a claim for death.

Information available to the Commission shows that Robert Otis Fuller and another American were arrested on October 15, 1960 in Santiago, Cuba. They and two Cuban nationals also captured were charged with promoting an uprising of armed individuals against the powers of State. It further appears that at a trial held at 4:00 P.M. on October 15, 1960 at which the American Consul was present and at which Robert Otis Fuller had legal counsel who is said to have done the best he could, the defendants admitted their guilt. The trial before a Revolutionary Tribunal, which has also been referred to as a court-martial, resulted in findings of guilty.

Thereafter the two Cuban nationals were sentenced to thirty years imprisonment each while both Americans were sentenced to death, although one of the Cubans had reportedly been pointed out as being the group leader. After appeals which were heard immediately after the trial and lasted about five minutes the sentences were upheld. It further appears that the defense counsel both at the trial and during the appeal strongly argued that it was unjust to ask for or mete out greater punishment for the Americans than for the Cubans. The executions of the two Americans were carried out on October 16, 1960.

It is universally recognized that a State has inherent authority to punish persons within its jurisdiction who are convicted of violating its criminal laws. Moreover, it is not unusual for a State to decree death upon conviction of counter-revolutionary activities.

However, it clearly appears, and this is substantiated by the argument of the defense counsel, that the Americans were executed because of their nationality and in the face of evidence that two Cubans were at least equally guilty. The Commission therefore must consider whether the sentence inflicted upon Robert Otis Fuller was in violation of international law.

It is pointed out (V Hackworth, *Digest of International Law* (1943) 606) that "The rule of international law is well settled that an alien who has been taken into custody by the authorities of a state is entitled to receive from those authorities just and humane treatment, regardless of the offense with which he is charged, and that failure to accord such treatment renders the state liable in damages. The Research in International Law, Harvard Law School, in connection with the *Draft Convention on Jurisdiction With Respect to Crime*, stated in Article 12:

In exercising jurisdiction under this Convention, no State shall prosecute an alien who has not been taken into custody by its authorities, prevent communication between an alien held for prosecution or punishment and the diplomatic or consular officers of the State of which he is a national, subject an alien held for prosecution or punishment to other than just and humane treatment, prosecute an alien otherwise than by fair trial before an impartial tribunal and without unreasonable delay, inflict upon an alien any excessive or cruel and unusual punishment, or subject an alien to unfair discrimination. (29 A.J.I.L. Supp. (1935) 596-597.)"

Moreover, Mr. Edwin M. Borchard has discussed this matter in his treatise "Diplomatic Protection of Citizens Abroad." In Section 142 in discussing the civil rights of an alien he states that whereas an alien must submit to proceedings brought in accordance with law on a charge that an offense has been committed, the proceedings must be regular and conducted in good faith and in accordance with law and forms of civilized justice, and "must not be arbitrary or unnecessarily harsh or discriminate against the alien on account of his nationality."

Further, he points out that on various occasions claims have been successfully prosecuted by the Department of State or allowed by international commissions on grounds including "punishment disproportionate in severity to the offense charged."

Mr Borchard continues, in Section 44 of his treatise (f.2), to point out that "Any discrimination against the alien, e.g., a graver punishment than that inflicted upon nationals, prejudicial irregularity in judicial proceedings, violation of treaties or international law, constitutes a denial of justice and opens the right to diplomatic interposition."

It is noted moreover that the United States protested the trial and sentence in a note to the Cuban Foreign Ministry on November 11, 1960 (see Whiteman, *Digest of International Law*, Volume 8 at p. 719). In the note, a protest was made to the conduct of the Fuller trial with the assertion that basic humanitarian standards were not observed and discrimination was clearly evident in the sentences passed. The protest further asserted that defendants in a criminal case are entitled to certain fundamental, humanitarian rights in connection with a trial, particularly when the ultimate penalty, death, may be imposed. In the Fuller trial, there was stated to have been wholly inadequate time to prepare an appeal since the Appeals took place less than one hour after the verdict. Protest was also made to the general manner in which the trial was conducted with long political harangues and a "Roman Circus atmosphere" surrounding the trial.

The Commission has considered this matter in depth and concludes that the imposition of the punishment of death upon the two American nationals, including Robert Otis Fuller, for the same crime for which two Cuban nationals were sentenced to thirty years imprisonment, was clearly a discrimination directed to persons alien to the Republic of Cuba, being disproportionate to the punishment meted out to the Cuban nationals, and constituted a denial of justice and thus a violation of international law for which the Government of Cuba may be held accountable within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

The Commission must now determine to whom the Government of Cuba is accountable in this matter. Miss Marjorie M. Whiteman in her work on

"Damages in International Law" (Vol. I, at p. 640) states that a claim for death by wrongful act is made not for the benefit of the estate, but for the benefit of the surviving dependents. As Miss Whiteman also points out (*supra*, 639), it must be shown not only that the respondent State has committed a wrong, but that the individual claimant has suffered pecuniary loss or injury. The record discloses that whereas Robert Otis Fuller was divorced, he was survived by a daughter, LYNITA GAY FULLER, then almost six years old, to whom the decedent owed the parental obligations of support and education during her minority (and see *supra*, 649). The Commission therefore finds that on October 16, 1960, the said LYNITA GAY FULLER, a national of the United States since birth, suffered a loss within the meaning of Title V of the Act.

Accordingly, so much of the claim of JENNIE M. FULLER, and the heirs of William Otis Fuller, Deceased, as is based on the death of Robert Otis Fuller, is denied.

There remains for determination the extent of the indemnity which LYNITA GAY FULLER is entitled to have certified in her favor.

In recent times, Miss Whiteman states (*supra*, 660), foreign offices and arbitral tribunals have generally estimated the indemnity in death cases on the basis of the worth to the claimant of the expected contributions of the person for whose death an indemnity is claimed. The Commission has considered the prior income of Robert Fuller and his age and finds that the expected contributions for his daughter from the time of his death to the date of her majority would amount to the fair and reasonable amount of \$20,000.00. Accordingly, the Commission concludes that LYNITA GAY FULLER suffered a loss in this amount on October 16, 1960, within the meaning of Title V of the Act.

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.

CERTIFICATIONS OF LOSS

The Commission certifies that JENNIE M. FULLER 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 Two Hundred Thirty Thousand Fifty-two Dollars and Thirty-seven Cents (\$230,052.37) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that IRENE JEWETT (FULLER) MOSS 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that FRANCES RUTH FULLER 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that JEANNETTE OTIS (FULLER) HAUSER 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that ANGELA GRACE (FULLER) LUTES 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that JEROME CAVERNO FULLER 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$25,561.37) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that FREDERICK JEWETT FULLER 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 Twenty-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$25,561.37) with interest at 6% per annum from February 15, 1960 to the date of settlement; and

The Commission certifies that LYNITA GAY FULLER 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 Forty-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$45,561.37) with interest at 6%^P per annum on \$25,561.37 from February 15, 1960 and on \$20,000 from October 16, 1960, to the date of settlement.

Dated at *Washington, D.C.*, and entered as the Proposed Decision of the Commission May 19, 1971.

IN MATTER OF THE CLAIMS OF **BERLANTI CONSTRUCTION
COMPANY, INC., ET AL.**

Claim Nos. CU-0871 and 0657—Decision No. CU-5880

Asserted losses based on the difference between a "cost-plus" contract and a "cost-plus" subcontract to build a housing project in Cuba that was halted shortly after construction commenced are speculative and not allowable under Title V of the Act.

PROPOSED DECISION *

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$2,696,817.43, were presented by BERLANTI CONSTRUCTION COMPANY, INC. and ILONA GERO RIEGER based upon asserted losses arising out of the asserted breach of a contract by Cuba. It appears that BERLANTI CONSTRUCTION COMPANY, INC., organized under the laws

^P This decision was entered as the Commission's Final Decision on November 10, 1970.

of Delaware, is a national of the United States. ILONA GERO RIEGER has been a national of the United States since January 28, 1957.

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.

Claimants assert the following losses:

Claim No. CU—0871

Loss of profit	\$1,500,000.00
Premiums for bonds	17,416.13
Loss of collateral	67,414.38
Disbursements after breach	79,486.92
Legal fees	200,000.00
Total	\$1,864,317.43

Claim No. CU—0657

Loss of profit (37.5 interest)	-\$ 825,000.00
Shares of stock in Cuban corporation	-7,500.00
Total	832,500.00

The record shows that Angel Pagliuca, a stockholder of BERLANTI CONSTRUCTION COMPANY, INC. (hereafter called claimant), who has filed a claim on his behalf (CU-0632), had been negotiating with the National Housing Commission of Cuba (NHC) concerning a contract to build a low-cost housing development in Cuba. By letter dated November 8, 1958 (Exhibit A), NHC advised Mr. Pagliuca that it would agree to have claimant, which had not yet been organized, construct the development in Cuba.

Pursuant to that arrangement, an agreement was concluded on November 11, 1958 (Exhibit B) between Mr. Pagliuca, ILONA GERO RIEGER, the other claimant herein, and Louis Berlanti to form the claimant corporation. Claimant was duly organized under the laws of Delaware on November 18, 1958 (Exhibit C), and the stock interests therein were distributed as follows: Mr. Berlanti—25%, Mr. Pagliuca and Mrs. Rieger—37.5% each (Exhibit D).

It further appears that NHC had agreed to enter into a contract for an amount not in excess of \$10 million as the cost of the housing development and to pay interest and finance charges in an amount not to exceed 7.5%

of the basic contract cost (letters from NHC of November 10, 1958 and November 18, 1958 to Mr. Berlanti). The understanding with NHC was that the three stockholders of claimant, particularly Mr. Berlanti and Mr. Pagliuca, were to find a concern that was willing to loan \$10 million to Cuba on account of the development; that the funds were to be deposited in the Bank of Nova Scotia, New York Branch; that the funds were to be loaned to BANDES, a banking agency of the Government of Cuba, for a five-year period at 5% interest per year; and that BANDES was to make the funds available to NHC (letter of November 18, 1958 from NHC). Subsequently, NHC authorized claimant to subcontract any or all of the basic contract (letter of November 28, 1958).

Accordingly, claimant's stockholders agreed to pay a finder's fee of \$100,000.00 to a firm which ultimately procured the loan of \$10 million (Exhibits E and F). Claimant signed promissory notes covering the finder's fee of \$100,000.00, payments to begin on February 18, 1959 and continue for five consecutive months thereafter (Exhibits H and L).

On November 20, 1958, a contract was concluded between NHC and claimant for the construction of a housing development in Cuba (Exhibit A attached to original claim). It was agreed that claimant would construct the development for an amount not in excess of \$10 million with the proviso that the specific details as to the units involved would be "fixed in successive contracts according to unit groups and by provinces." The agreement was made on a "cost-plus contract" basis (Exhibit B attached to original claim).

On or about November 27, 1958, BANDES received the \$10 million (Exhibit D attached to original claim). Surety bonds were obtained in connection with the loan (Exhibit GG), and claimant was obligated to pay the premiums.

A day after the basic contract was concluded, the claimant executed a subcontract with Constructora Guanahani, S.A. (Guanahani), which was assertedly wholly-owned by Mr. Pagliuca. (See Claim CU-0632.) According to that subcontract, dated January 21, 1958, Guanahani agreed to construct the housing development for \$8 1/2 million (Exhibit SS).

On November 28, 1958, the three stockholders of claimant caused Compania Constructora Berlanti, S.A. (Berlanti, S.A.) to be organized as a corporation under the laws of Cuba (Exhibit II). The stockholders' interests therein were the same as their interests in claimant (CU-0871); namely, Mr. Berlanti-25%, Mr. Pagliuca and Mrs. Rieger-37.5% each.

NHC ordered construction to begin about December 1, 1958. The record shows that construction had actually begun by Guanahani as indicated by a letter of December 24, 1958 from NHC to claimant. It further appears from the minutes of a stockholders' meeting of Berlanti, S.A., that claimant (CU-0871) assigned all its rights and interests in the construction agreement to Berlanti, S.A. on December 26, 1958 (Exhibit JJ).

On January 27, 1959, Cuban authorities ordered a halt to the construction of the development, and no further work was performed thereafter (Exhibit I attached to original claim). It is asserted by claimants that this action on the part of the Government of Cuba gave rise to the losses asserted herein.

Claimant notified the finder, to whom it was indebted in the amount of \$100,000.00, under date of February 13, 1959 that it would be unable to pay the first note due on February 18, 1959 (Exhibit HH). The evidence includes a copy of a judgment entered in a court of New York on January 3, 1961 against claimant in favor of the finder in the amount of \$90,904.46. It does not appear from the record that claimant made any payment on account

of the judgment. Moreover, it does not appear that any such payment could be compelled by legal action since claimant apparently owned only one asset, the contract with NHC which it had assigned to Berlanti, S.A.

Claimant instituted an action against the Government of Cuba in the courts of Florida and obtained a default judgment on *July 26, 1961* in the amount of \$6,190,382.16 (Exhibit J attached to original claim). Pertinent files of the Department of State disclose that upon action by the Czechoslovak Socialist Republic on behalf of the Government of Cuba pleading sovereign immunity, the judgment was vacated on December 27, 1961.

LOSS OF PROFIT

Claimant asserts a loss of profit of \$1.5 million, representing the difference between the underlying basic contract and the subcontract. Mrs. Rieger asserts a loss of profit of \$825,000.00, representing her 37.5% share of \$6,190,382.16, the amount of the judgment that was vacated. In effect, Mrs. Rieger is claiming a loss as a stockholder of claimant, a national of the United States.

Section 505(a) of the Act provides as follows:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered... .

Inasmuch as Mrs. Rieger's claim (CU-0657) in this respect is barred by the express provisions of Section 505(a) of the Act, it must be and hereby is denied. (See *Claim of Mary F. Sonnenberg*, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

With respect to claimant, the record clearly shows that claimant had assigned to Berlanti, S.A. all its rights and interests under the construction contract on December 26, 1958, prior to January 27, 1959 the asserted date of loss when Cuban authorities halted all construction then in progress. In view of the foregoing the Commission inquired as to the basis of the claim filed by claimant, the assignor before the date of loss. Counsel's response of May 1, 1970 was as follows:

The individual stockholders comprising the claimant are the same stockholders comprising the Cuban corporation, and was organized for the purpose of complying with Cuban law that only Cuban corporations could conduct and transact business in Cuba. However all transactions for the construction contract were had with the Delaware corporation claimant. As far as the claimant corporation is concerned it furnished everything necessary to the Cuban corporation to function, and actually the Cuban corporation was the alter ego of the Delaware corporation for all purposes. All contracts were entered into by and with the Delaware corporation, and the Cuban corporation never acted.

Upon consideration of this matter, the Commission finds that as of December 26, 1958 claimant no longer owned any interest in the construction contract or in any profits that could be derived thereunder despite the fact that claimant asserted Cuban losses as a deduction in its Federal tax returns for the fiscal year, November 1, 1963 to October 31, 1964. A copy of claimant's tax returns submitted in support of this portion of its claim indicates that claimant asserted a tax deduction of \$202,716.88 based upon "Preliminary costs and expenses on construction job—project abandoned." However, that tax return shows that claimant earned no profit during that fiscal year. Accordingly, there was no necessity for the Internal Revenue Service to audit

the returns. The Commission therefore concludes that the record does not establish that claimant owned the claim on January 27, 1959 when it arose. For the foregoing reasons, the portion of claimant's claim for the asserted loss of profit of \$1.5 million is denied.

When this portion of the claim is considered on behalf of the stockholders of Berlanti, S.A., the same result is reached.

Since Berlanti, 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No CU-0180, 1967 FCSC Ann. Rep. 33.)

The record indicates that Berlanti, S.A. owned only one asset—the assigned construction contract. According to counsel's letter of May 1, 1970, this Cuban corporation "never acted." It further appears from a copy of a letter of January 19, 1959 from Guanahani, the subcontracting Cuban corporation, that it had expended \$256,000.00 in initial construction work with respect to eleven buildings. Since Mr. Pagliuca's claim (CU-0632) is based, in part, on his asserted 100% stock interest in Guanahani, these expenditures by Guanahani will be considered in the course of determining Claim No. CU-0632.

Moreover, the Commission finds no valid basis for concluding that had the "cost-plus" contracts been fully executed Berlanti, S.A. would have earned a profit of \$1.5 million. As already noted, it was a "cost-plus" contract in an amount not to exceed \$10 million. It could not therefore be concluded with any degree of certainty what the final cost would be. By the same token, the subcontract was likewise subject to the same conditions, and was not to exceed \$8.5 million. Inasmuch as construction was halted shortly after it commenced, any conclusion that an amount certain would be earned as profit would be purely speculative and without foundation. (See *Claim of Robert L. Cheaney and Marjorie L. Cheaney*, Claim No. CU-0915, involving the denial of a claim for estimated future profits; *Claim of Ford Motor Company*, Claim No. CU-3072, in which claim for loss of profits and contingent losses was denied; *Claim of Cuban Electric Company*, Claim No CU-2578, in which claim for indirect losses was denied.)

The Commission finds that the evidence of record does not establish that Berlanti, S.A. sustained any loss within the meaning of Title V of the Act as a result of the termination of the construction contract. Considering claimant's assertions in this respect to be on behalf of its stockholders, this portion of the claim is denied. Mrs. Rieger, having based a portion of her claim on her stock interest in Berlanti, S.A., this portion of her claim is denied. Mr. Pagliuca's claim in this respect will be considered on its own merits in CU-0632.

Accordingly, as indicated above, Claim No. CU-0657 is denied in its entirety.

BALANCE OF CLAIM No. CU—0871

The balance of this claim of claimant is based upon certain disbursements

and obligations it assertedly incurred on account of the construction contract, The following losses are claimed :

1. Insurance premiums for surety and appeal bonds -----	\$ 17,416.18
2. Miscellaneous expenses -----	96,395.90
3. Collateral pledged as security for the issuance of the bonds	67,414.38
4. Payments made by the surety company in connection with the surety bonds -----	143,715.33
5. Disbursements by Mrs. Rieger -----	147,972.88
6. Attorney's fees -----	200,000.00
Total -----	<u>\$672,914.62</u>

It is noted from the record that items (1), (2) and (3) above represent expenses incurred by the Berlanti Construction Company, Inc. of New York, assertedly on behalf of claimant. The Commission inquired about these asserted losses since they appeared to have been sustained by a New York corporation on behalf of claimant, a Delaware corporation with a similar name. The Commission called attention to the fact that claims based on debts of American corporations are not allowable pursuant to Section 505(a) of the Act unless the debts were charges on property taken by the Government of Cuba. (See *Claim of Anaconda American Brass Co.*, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) It does not appear from the evidence of record that any of these asserted debts due from claimant were charges on property taken by Cuba and no claim for these losses has been filed by or on behalf of the Berlanti Construction Company, Inc. of New York. Under these circumstances if such a claim had been filed, it would have to be denied.

Counsel's response of February 17, 1970 was that the claim for profit of \$1.5 million included the asserted losses under item (4) above. He added that Berlanti of New York and Louis Berlanti had contracted to advance certain moneys for the use and benefit of claimant in furthering the construction contract; and that Berlanti of New York and claimant were neither owned by the same stockholders, nor was either a wholly-owned subsidiary of the other.

On the basis of the entire record, the Commission finds that the losses asserted under items (1), (2) and (3) above assertedly were sustained by a New York corporation on behalf of claimant. Inasmuch as the record does not establish that these debts due from claimant, an American corporation, were charges on property taken by Cuba, the portion of the claim based on such asserted losses is denied.

Inasmuch as item (4) is essentially a part of the portion of the claim for profit of \$1.5 million which has already been denied, that portion of the claim is also denied.

The portion of the claim for disbursements in the aggregate amount of \$79,486.92 apparently is included in part under items (2) and (5) above. Since item (2) has already been denied, the applicable part of the claim in this respect is also denied. Item (5) above relates to expenses incurred by Mrs. Rieger assertedly in furtherance of the contract between claimant and NHC. An examination of the list indicates that it includes hotel, travel and related expenses assertedly paid by Mrs. Rieger in 1957, 1958 and 1959, both before the contract with NHC was concluded and after the assignment of the contract by claimant to Berlanti, S.A. The Commission finds no valid basis for concluding that these expenses constitute losses within the meaning of Title V of the Act. If it were established that these expenses were made

on behalf of claimant, this portion of the claim would have to be denied because the construction contract which assertedly gave rise to these claims was assigned to a Cuban corporation before the date of loss. If it were established that these expenses were made by Mrs. Rieger on behalf of Berlanti, S.A., in which she owned a stock interest, so that it constituted a debt of the Cuban corporation, this portion of the claim would have to be denied because the Cuban corporation, Berlanti, S.A., owned no assets with which to pay such a debt. The loss in such event would not be attributable to any action on the part of the Government of Cuba. (See *Claim of Pepsi Co., Inc.*, Claim No. CU-3596.)

The final portion of the claim of claimant is based on attorneys' fees in the aggregate amount of \$200,000.00. The first part thereof in the amount of \$100,000.00 represents services rendered in negotiating the original contracts, setting up the corporate structures in Delaware and Cuba, and in vain attempts to reinstate the contracts and defend the actions assertedly resulting from the breach of the contracts by the Government of Cuba. The second part thereof, also in the amount of \$100,000.00, involved expenses incurred in actions against the Government of Cuba to recover for the taking of property, in which the judgment in favor of claimant was vacated.

The Commission has held that claims for attorneys' fees and expenses incurred in appealing from an order of Cuba taking that claimant's property does not constitute a claim for a loss of property within the purview of Title V of the Act. (See *Claim of E. R. Squibb & Sons Inter-American Corporation*, Claim No. CU-2469; *Claim of Mathieson Pan-American Chemical Corporation*, Claim No. CU-2470.)

The Commission finds no valid basis for distinguishing the two portions of the claim for attorneys' fees aggregating \$200,000.00. Accordingly, these two portions of the claim are denied.

Therefore, as indicated above, Claim No. CU-0871 is denied in its entirety.

Dated -at Washington, D.C., and entered as the Proposed Decision of the Commission October 7, 1970.

IN THE MATTER OF THE CLAIM OF ANGEL PAGLIUCA

Claim No. CU-0632—Decision No. CU-5879

Claims of nationals of the United States for actual losses sustained as a result of Cuba's nationalization actions are allowable under Title V of the Act.

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 \$6,660,130.01, was presented by ANGEL PAGLIUCA based upon the asserted loss of certain personal property in Cuba. Claimant has been a national of the United States since February 4, 1957.

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.

Claimant asserts the following losses:

Personal belongings	\$ 84,261.60	
6% interest from March 1961 to October 1961	3,372.46	\$ 87,634.06

Debt of Cuban Government (Commissions and expenses)	\$ 567,550.00	
6% interest from December 1958 to August 1961	93,645.75	661,195.75

Constructora Guanahani, S.A. Stock interest, construction materials and equipment	\$ 612,086.50	
6% interest from January 1959 to August 1962	136,659.03	748,745.53

Stock interest in Berlanti Construction Co., S.A.	\$ 7,500.00	
.375 equity in Berlanti- Delaware's estimated profits on contract	825,000.00	
Construction equipment	1,953,996.60	
	2,786,496.60	
6% interest for 1959, 1960 and 1961	361,719.38	3,148,215.98

Stock interest in Copetrol Oil Refining Co., S.A.	\$1,100,000.00	
Loan	230,292.26	
	1,330,292.26	
6% interest from January 1959 to August 1961	212,846.86	1,543,139.12

Fomento Excelsior Inter- nacional, S.A. Assets	\$ 432,292.85	
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6% interest from March 1960 to August 1961	38,906.72	471,199.57
Total		\$6,660,130.01

It is noted at the outset that claim is being made for interest with respect to each item of property herein. Claimant has computed interest for specific periods of time. As indicated hereafter, interest is being allowed at 6% per annum from the respective dates of loss of certifiable items to the date of settlement.

PERSONAL BELONGINGS

Based upon the evidence of record, including affidavits and invoices covering some of the items of jewelry, the Commission finds that claimant owned certain items of furniture, furnishings and other personal belongings maintained at his rented apartment at 58-0 Street, Havana, Cuba. Affidavits from individuals having personal knowledge of the facts indicate that on March 10, 1961 Cuban officials took said personal property. Accordingly, the Commission finds that claimant's furniture, furnishings and other personal belongings were taken by the Government of Cuba on March 10, 1961.

Claimant asserts that the personal property in his Havana apartment had a value of \$84,261.60. He relies on an itemized list of said property which he states in his letter of March 9, 1970 was prepared by former Cuban officials and others. The Commission had suggested the submission of evidence to show the approximate dates of acquisition of each item of property and the approximate costs thereof. However, no such evidence has been filed.

The Commission notes from claimant's letter of March 9, 1970 that his first trip to Cuba was in March 1947 and that he left Cuba on December 17, 1959. An examination of the list of personal property indicates that many of the items are subject to depreciation at the rate of 5% per year, and that clothing in the amount of \$3,500.00 is subject to depreciation at the rate of 20% per year. Other items, however, such as silver, oil paintings, jewelry, cash, liquors and food generally are not subject to depreciation. The items subject to depreciation aggregate \$46,930.00, and the other items aggregate \$37,331.60.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the first said group of items should be depreciated by 50%. The Commission therefore finds that the value of such items of property on March 10, 1961, the date of loss, was \$23,465.00. Accordingly, the aggregate value of claimant's personal belongings on the date of loss was \$60,796.60.

DEBT OF CUBAN GOVERNMENT

Claimant asserts a loss of \$567,550.00 for expenses incurred and commissions due from the Government of Cuba on account of a certain housing contract with Cuba, representing \$67,550.00 for expenses and \$500,000.00 for commissions. This portion of the claim is closely related to and actually forms part of the claim for a stock interest in Berlanti Construction Co., S.A. and in Berlanti Construction Co., Inc. of Delaware. Accordingly, this portion of the claim will be discussed below in conjunction with the related part hereof.

CONSTRUCTORA GUANAHANI, S.A.

Based upon the evidence of record, including stock certificates and affidavits, the Commission finds that claimant owned a 100% stock interest in Constructora Guanahani, S.A. (Guanahani), a Cuban corporation.

Since Guanahani 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 that an American stockholder is entitied to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

It appears from the record and the related *Claim of Berlanti Construction Company, Inc.* (Berlanti of Delaware), Claim No. CU-0871, in which claimant owned a stock interest, that Guanahani was authorized by contract dated November 21, 1958 with Berlanti of Delaware to construct a certain housing development in Cuba as subcontractor. This matter is discussed in detail below under another portion of this claim. In connection with that subcontract, Guanahani purchased certain materials and equipment and commenced construction early in December 1958. The evidence in Claim No. CU-0871 shows that Cuban officials halted all construction on January 27, 1959. Claimant states that Guanahani's assets were taken by Cuba at the same time. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that Guanahani's assets were taken by the Government of Cuba on January 27, 1959.

Claimant asserts the loss of \$612,086.50 for materials and equipment at the site where construction was in progress. The Commission suggested the submission of balance sheets and other appropriate documentary evidence to establish the nature and value of Guanahani's assets and its liabilities so that its net worth could be determined. Claimant's response of March 9, 1970 was that all such records had remained in Cuba and were unavailable.

The record, however, contains the following pertinent evidence:

- (a) A copy of an inventory made on December 30, 1958 of Guanahani's material and equipment at the construction site, aggregating \$612,086.50.
- (b) A copy of an affidavit, dated November 28, 1966, indicating that Guanahani owned office furniture having a value of \$5,646.50.
- (c) A copy of a letter, dated January 19, 1959, from the President of Guanahani to Berlanti of Delaware, indicating that Guanahani had commenced construction of the housing development, and that as of that date the value of the construction partially completed aggregated \$256,000.00.
- (d) Affidavits from suppliers of material indicating that they had delivered to the construction site property aggregating \$410,873.00 with respect to which \$216,723.00 was still due one of the suppliers and \$194,150.00 was due another supplier.
- (e) A copy of a statement, dated January 2, 1959, from claimant's account, stating that upon examination of claimant's books and records in Cuba, claimant's assets and liabilities as of December 30, 1958 were as follows, the Cuban peso being on a par with the United States dollar:

ASSETS

Bank account	\$ 1,246.96
Cash with private depository	210,237.00
Accounts receivable	276,500.00
Copetrol Oil Refining Co., S.A. Receivable	230,292.26
Copetrol Oil Refining Co., S.A. Shares of stock	1,100,000.00
Berlanti Construction Co., S.A. Shares of stock	1,953,996.00
Personal property in Havana residence	84,311.60
Constructora Guanahani, S.A. Shares of stock	1,317,086.50
Fomento Excelsior Internacional, S.A. Shares of stock	250,050.00
Commissions receivable	500,000.00
Total Assets	<u>\$5,923,720.32</u>

LIABILITIES AND CAPITAL

Fomento Excelsior Internacional, S.A.	\$ 20,010.00
Copetrol Oil Refining Co., S.A.	25,000.00
Berlanti Construction Co., S.A.	1,450,000.00
Constructora Guanahani, S.A.	711,216.00
Various creditors	380,256.00
Commissions payable	355,000.00
Reserve for taxes	186,000.00
Other reserves	70,000.00
Interest payable on loans	32,350.00
Angel Pagliuca, capital account	2,693,888.32
Total Liabilities and Capital	<u>\$5,923,720.32</u>

Since all of the pertinent books and records relating to claimant's Cuban operations were left in Cuba, the foregoing statement of assets and liabilities cannot be considered conclusive on the issue of valuation. Moreover, the record fails to establish that Guanahani owned assets other than those at the construction site. Upon consideration of the entire record, and in the absence of more compelling evidence, the Commission finds that the values of Guanahani's assets at the construction site on January 27, 1959, the date of loss, were as follows:

Inventory of material and supplies (This is deemed to include in part the supplies indicated under item (d) above.)	\$ 612,086.50
Office furniture	5,646.50
Partially completed construction (This is deemed to include in part the supplies indicated under item (d) above.)	256,000.00
Debt due from claimant	711,216.00
	<u>\$1,584,949.00</u>

The Commission finds that the debt due from claimant did not constitute an asset of Guanahani that was taken by the Government of Cuba. It is therefore concluded that the aggregate value of Guanahani's assets on the date of loss was \$873,733.00.

As indicated under item (d) above, the record shows that Guanahani was indebted to suppliers in the amounts of \$216,723.00 and \$194,150.00, aggregating \$410,873.00. Accordingly, the Commission finds that the net worth of Guanahani or the excess of its assets over its liabilities on January 27, 1959 was \$462,860.00. It is concluded that claimant sustained a loss in that amount with respect to his stock interest in Guanahani.

BERLANTI CONSTRUCTION CO., S.A. AND BERLANTI
CONSTRUCTION COMPANY, INC. OF DELAWARE

Claimant, in effect, asserts two losses closely related to one another; namely, debts of the Cuban Government in the amount of \$567,550.00, and losses in the amount of \$2,786,496.60 on account of his stock interests in Berlanti Construction Co., S.A. a Cuban corporation, and in Berlanti Construction Company, Inc. of Delaware, an American corporation.

Section 505(a) of the Act provides as follows:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered . . .

The record shows that Berlanti Construction Company, Inc. is a national of the United States within the meaning of Section 502(1) (B) of the Act. [See *Claim of Berlanti Construction Company, Inc.*, Claim No. CU-0871.] The Commission finds that the portion of the claim based on a stock interest in Berlanti Construction Company, Inc. is barred by the express provisions of Section 505(a) of the Act. Accordingly, so much of this claim as is based on an interest in Berlanti of Delaware is denied.

In this connection, it further appears that claimant is requesting \$500,000.00 as commissions due with respect to a contract to construct a housing development in Cuba entered into on November 20, 1958 between Berlanti of Delaware and the National Housing Commission (NHC) of Cuba, an agency of the Government of Cuba. In addition, claimant is requesting \$67,550.00 for expenses incurred in connection with that contract.

The record, including the evidence submitted in support of Claim No. CU-0871, discloses that claimant had been negotiating with NHC concerning a contract to build a low-cost housing development in Cuba. In the course of these negotiations, the Berlanti Construction Company, Inc. was organized on November 18, 1958 under the laws of Delaware, claimant's interest therein being 37.5%. NHC agreed to enter into a construction contract with Berlanti of Delaware and to pay certain finance and interest charges in an amount not to exceed 7.5% of the basic construction contract.

The construction contract between NHC and Berlanti of Delaware was concluded on November 20, 1958 and provided for a cost not to exceed \$10 million. The loan of \$10 million to finance the development was obtained through efforts of claimant and as indicated above, construction of the housing project commenced. The record includes a copy of a letter, dated July 11, 1958, from NHC to claimant indicating that claimant is entitled to a commission of 5% on account of arranging for financing the loan to Cuba, as well as compensation for expenses. By letter dated December 3, 1958, NHC stated that claimant was entitled to 5% of \$10 million as his fee. It

further appears from an affidavit, dated November 25, 1966, from the former director of NHC that claimant had been authorized to expend funds in the course of obtaining the loan on behalf of the Government of Cuba. The record also includes copies of bills claimant sent to the Government of Cuba in 1959, requesting payment of \$567,550.00 for services rendered and expenses incurred in connection therewith. Claimant's requests were ignored by Cuba, and to date claimant has never recovered any amount on account of that debt.

On the basis of the entire record, the Commission finds that the Government of Cuba owed claimant a debt in the aggregate amount of \$567,550.00. The Commission further finds in the absence of evidence to the contrary that claimant's losses in this respect occurred on January 27, 1959 when construction was halted by Cuban officials.

Claimant also seeks to recover \$825,000.00, representing his 37.5% share of \$6,190,382.16, the amount of a default judgment entered in a court of Florida on July 26, 1961 in favor of Berlanti of Delaware against the Government of Cuba (see Claim No. CU-0871). Inasmuch as this portion of the claim is based on a stock interest in an American corporation, it is denied pursuant to the express provisions of Section 505(a), *supra*. Moreover, the record in Claim No. CU-0871 shows that the judgment was vacated on December 27, 1961.

Another portion of the claim is based upon the asserted value of claimant's stock interest in Berlanti Construction Co., S.A. (Berlanti, S.A.) in the amount of \$1,953,996.60. Claimant relies upon the said statement of his assets and liabilities as of December 30, 1958, in which his interest in Berlanti, S.A. is shown as \$1,953,996.00, and upon another statement, dated January 2*, 1959, showing the following as assets of Berlanti, S.A.:

Equipment	\$1,360,000.00
Furniture and office equipment	125,000.00
Remodeling of building and air conditioning system	116,650.00
Building materials	352,346.60
	Total
	\$1,953,996.60

As noted above, no records are available to support the foregoing statement. Moreover, it is noted from the statement of assets and liabilities of claimant as of December 30, 1958, apparently prepared by the same accountant who set forth the foregoing assets of Berlanti, S.A., that claimant owed debts to Berlanti, S.A. in the amount of \$1,450,000.00. Other debts also appear in that statement, but a number of them in the amounts of \$380,256.00, \$355,000.00, \$186,000.00, \$70,000.00, and \$32,350.00, respectively, are not identified, and it is therefore unknown whether they were debts owing to Berlanti, S.A. or one of the other Cuban corporations involved in this claim. Additionally, it appears from the record in CU-0871 that the only asset owned by Berlanti, S.A. was the contract with NHC which Berlanti of Delaware had assigned to Berlanti, S.A. The record in CU-0871 also indicates that Berlanti, S.A. never acted, which also indicates that it owned no assets other than the assigned contract.

Furthermore, claimant states in his official claim form that the value of his stock interest in Berlanti, S.A. was \$7,500.00. Another stockholder of Berlanti, S.A., Ilona Gero Rieger, who also filed a claim against Cuba (CU-0657), likewise asserted a loss of \$7,500.00 for her stock interest in Berlanti, S.A. which was equivalent to the interest owned by claimant herein.

Upon consideration of the entire record, the Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim for a stock interest in Berlanti, S.A. It may be noted in this respect that there is no evidence of record in Claim No. CU—0871 or in Claim No. CU—0632 to establish that Berlanti, S.A. sustained any loss as a result of the cancellation of the contract that had been assigned to Berlanti, S.A. from Berlanti of Delaware. Moreover, the record in this claim is found insufficient to support this portion of the claim. Accordingly, this portion of the claim is denied.

COPETROL OIL REFINING CO., S.A.

Claimant asserts a loss of \$1,330,292.26, representing \$1,100,000.00 for his stock interest in Copetrol Oil Refining Co., S.A. (Copetrol), a Cuban corporation, and \$230,292.26 for a debt due from Copetrol. Claimant relies on the statement of assets and liabilities as of December 30, 1958 which sets forth these amounts as part of his assets.

Based upon a copy of a stock certificate and other evidence of record, the Commission finds that claimant owned 44,000 shares of stock in Copetrol with a par value of \$25.00 per share. It further appears from a statement by an officer of Copetrol, dated December 30, 1958, that Copetrol had 57,600 shares of outstanding capital stock.

The record includes a statement, dated January 21, 1959, from the general manager of Copetrol indicating that between January 3 and 7 of 1959 the warehouse of Copetrol was "completely plundered by Fidel Castro's Rebel Army." On the basis of the foregoing, the Commission finds that Copetrol's assets were taken by Cuba on January 5, 1959.

It appears that no balance sheets for Copetrol are available. However, claimant has submitted other evidence concerning the assets and liabilities of Copetrol.

The asserted loss of \$1,100,000.00 for claimant's stock interest in Copetrol was computed on the basis of its par value, \$25.00 per share for 44,000 shares.

It appears from the evidence of record that Copetrol was organized in Havana, Cuba on June 18, 1958. Its purpose was to refine crude oil into gasoline and other related products.

With respect to Copetrol's assets, the following evidence is included in the record:

1. A statement, dated January 10, 1959, from the warehouse manager of Copetrol, indicating that the value of materials taken from Copetrol's warehouse was \$879,066.45. This statement is supported by one, dated January 21, 1959, from the general manager of Copetrol in which he listed the items of property thus taken by Cuba as follows:

2 Motorlevels Caterpillar A—12	\$ 26,000.00
1 Ferguson Petroleum	3,650.00
1 Generator Plant	125,000.00
2 Tornapoul	211,366.45
500 tons deformed bars 3/8	23,750.00
1 Block Johnson Plant	25,000.00
3 Bulldozers TD18 International	91,800.00
5,000 tons portland cement	225,000.00
Assorted material of steel	60,000.00
Ingots, etc.	87,500.00
Total	\$879,066.45

2. A statement, dated January 23, 1959, from the general manager of Copetrol listing the following items as losses:

Legal expenses to form the company	\$ 163,246.00
Legal fees	33,000.00
Advertising, etc.	22,460.00
Blue prints and engineering costs	95,976.50
Commission to real estate broker	132,237.00
Salaries, rent and other expenses	42,740.00
Advances to executive	25,000.00
Furniture	6,750.00
Land on Isle of Pines, Cuba	1,322,370.00
Engineering work and preliminary studies	170,265.60
Projects on civil work, hydraulics, etc.	85,976.50
Equipment and material	879,066.45
Promotional work	150,000.00
Cash	16,550.00
Total	<u>\$3,145,638.05</u>

3. A statement, dated January 23, 1959, from the general manager of Copetrol indicating that out of the \$3,145,638.05, the amount of \$1,670,292.26 is "presumed unpaid," leaving a net amount of \$1,670,292.26. However, the statement fails to indicate which of the items remain unpaid and to what extent.

4. A statement, dated October 9, 1958, from the President of a Cuban corporation which sold the land on the Isle of Pines to Copetrol, indicating that the land has been sold for \$1,322,370.00, and that \$132,327.00 had been paid by Copetrol on account.

An examination of the list set forth under (2) above indicates that all of the items therein except advances to executives, furniture, land, and cash constitute organization expenses that normally would be amortized over a period of time. The Commission has had occasion to consider whether organization expenses should be deemed to be an asset of a nationalized entity for the purposes of Title V of the Act. The Commission has held that if the earnings of the entity were sufficiently large in relation to the amount of organization expenses, it could be concluded that the organization expenses enhanced the entity's value and therefore constituted a valuable asset of the entity. (See *Claim of Albert J. Parreno*, Claim No. CU-1231.)

The record shows that Copetrol was organized on June 18, 1958, and that it existed only for a few months until January 5, 1959 when it was taken by the Government of Cuba. It does not appear from the evidence of record that Copetrol had any earnings during its existence. Under these circumstances there is no valid basis for considering organization expenses in the amount of \$763,664.60, as shown by the record or in any amount, as an asset of Copetrol and the Commission so finds.

Upon consideration of the entire record, the Commission finds that the aggregate value of the assets of Copetrol on January 5, 1959, the date of loss, was as follows:

Land on Isle of Pines

(The Commission finds that Copetrol's equity consisted of the payment of \$132,327.00 on account of the purchase of the land plus the commissions of \$132,237.00 paid to the real estate broker.)

\$ 264,564.00

Furniture	6,750.00
Equipment and material	879,066.45
Cash	16,550.00
Advances to executive (The Commission finds that claimant is the executive in question on the basis of his state- ment of assets and liabilities which shows that he owed \$25,000.00 to Copetrol.)	25,000.00
Total	<u>\$1,191,930.45</u>

The Commission finds that the item, advances to executive, did not constitute an asset of Copetrol that was taken by Cuba. Accordingly, the aggregate value of Copetrol's assets that were taken by Cuba was \$1,166,930.45. It further appears from the evidence of record that in addition to the debts Copetrol owed on account of the land, which has already been taken into consideration, Copetrol owed claimant a debt in the amount of \$230,292.26. The Commission therefore finds that the net worth of Copetrol or the excess of its assets over its liabilities on January 5, 1959, the date of loss, was \$936,638.19.

Since Copetrol had 57,600 shares of capital stock outstanding on the date of loss, the Commission finds that each share of stock had a value of \$16.261079. Therefore, the value of claimant's 44,000 shares was \$713,274.76.

The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act. (See *Claim of Kramer, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July—Dec. 1966].)

As noted above, Copetrol owed claimant a debt in the amount of \$230,292.26. The Commission therefore finds that claimant's loss in that amount occurred on January 5, 1959 when Copetrol was taken by Cuba.

FOMENTO EXCELSIOR INTERNACIONAL, S.A.

Based upon affidavits and a stock certificate, the Commission finds that claimant owned 99 shares of stock in Fomento Excelsior Internacional, S.A. [Fomento]. This Cuban corporation was organized in Cuba on October 25, 1956 and was engaged in importing, exporting and selling merchandise, primarily tri-dimensional pictures. On the basis of a statement of February 26, 1960 from an officer of Fomento who has personal knowledge of the facts, the Commission finds that Fomento's assets were taken by the Government of Cuba on February 26, 1960. The evidence establishes that Fomento had 100 shares of capital stock outstanding on the date of loss. The remaining share of stock belonged to a nonnational of the United States.

It appears that no balance sheets or other financial statements concerning Fomento are available, all such records having been left in Cuba.

Claimant asserts a loss of \$432,292.85 on account of his stock interest in Fomento. It is noted, however, that in claimant's statement of assets and liabilities, his interest in Fomento is shown as having a value of \$250,050.00.

With respect to the value of Fomento, the record includes the following evidence:

(A) A statement, dated December 3, 1958, from an officer of Fomento, indicating that Fomento's inventory of merchandise in stock amounted to

\$432,292.85, the amount being claimed herein; and that the total assets of Fomento aggregated \$627,256.25.

(B) A detailed inventory of said stock, dated February 27, 1960, showing various items of property aggregating \$432,292.85. The inventory includes, *inter alia*, furniture valued at \$2,450.00, cash in the amount of \$6,464.00, and other items of inventory valued at \$46,450.00.

(C) Copies of invoices evidencing the purchase of a number of items that are included in the inventory. Those invoices show purchases of 1,170 watch bands on November 21, 1958 costing \$11,115.00; 1,280 gross of items of costume jewelry on November 20, 1958 costing \$71,744.00; 14,375 optical frames on July 11, 1958 costing \$38,237.50; 35,000 screens for tri-dimensional pictures on April 25, 1957 costing \$70,925.00; and 62,000 unused films on April 25, 1957 costing \$117,800.00. The record shows that all of these purchases were paid for in full by Fomento.

It further appears from claimant's statement of assets and liabilities that he owed Fomento a debt in the amount of \$20,010.00. The Commission finds, however, that this account receivable did not constitute an asset of Fomento that was taken by Cuba. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that Fomento had no liabilities.

Accordingly, the Commission finds that the net worth of Fomento or the excess of its assets over its liabilities on February 26, 1960, the date of loss, was \$627,256.25. Therefore, each of the 100 shares of outstanding capital stock had a value of \$6,272.5625, and claimant's 99 shares had a value of \$620,983.69.

Claimant's losses are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Personal belongings	March 10, 1961	\$ 60,796.60
Guanahani—stock interest	January 27, 1959	462,860.00
Debt of Cuban Government	January 27, 1959	567,550.00
Copetrol—stock interest	January 5, 1959	713,274.76
Debt due from Copetrol	January 5, 1959	230,292.26
Fomento—stock interest	February 26, 1960	620,983.69
	Total	\$2,655,757.31

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 Liste Corporation*, Claim No. CU-0644), and in this case it is so ordered as follows:

<i>FROM</i>	<i>ON</i>
January 5, 1959	\$ 943,567.02
January 27, 1959	1,030,410.00
February 26, 1960	620,983.69
March 10, 1961	60,796.60
Total	\$2,655,757.31

CERTIFICATION OF LOSS

The Commission certifies that ANGEL PAGLIUCA 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 Million Six Hundred Fifty-five Thousand Seven Hundred Fifty-seven Dollars and Thirty-one Cents (\$2,655,757.31) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., Oct. 14, 1970.

IN **THE** MATTER OF **THE** CLAIM OF ISABELLA **SHAMMA**

Claim No. CU-2593—Decision No. CU-3845

In a claim based on personal injury or disability under section 503(b) of the Act, it must be established that the injury or disability was the proximate result of action by the Government of Cuba in violation of international law.

Confiscation of property as a part of a penalty imposed in criminal proceedings under Cuban law does not constitute a valid claim under Title V of the Act, in the absence of a denial of justice within the contemplation of international law.

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 \$492,306.62, was presented by GERALDINE ISABELLA SHAMMA, a/k/a GERALDINE I. SUAREZ, based upon the asserted ownership and loss of certain real and personal property in Cuba, and upon personal injuries. 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.

REAL AND PERSONAL **PROPERTY**

Claimant asserts a loss of certain improved real property at Miramar and at Marianao, Havana, Cuba, in the aggregate amount of \$138,500.00; as well

as furniture, furnishings and various household effects maintained at the Miramar residence, in the amount of \$129,141.00; automobiles, luggage and sundry personalty in the amount of \$29,700.00; various items of jewelry in the amount of \$98,850.00; fur coats and other items of clothing in the amount of \$35,800.00; and a two-thirds interest in certain Cuban bonds in the amount of \$10,315.62. The aggregate amount claimed for this portion of the claim is \$442,306.62.

Claimant also states that she "was sentenced to Guanajay Prison in Cuba after being convicted of counter-revolutionary activities (for) acting as a liaison for x x x [a United States Government agency] situated in Cuba and (for) counter-revolutionary forces." The assertion that claimant was convicted of counter-revolutionary activities in violation of the laws of Cuba is corroborated by a substantial amount of evidence in the record, such as claimant's affidavit of April 27, 1967, a copy of an article written by claimant and published in the Saturday Evening Post issue of May 18, 1963, a number of recent newspaper articles, and a certified translation of the court decree, dated at Havana, Cuba, December 16, 1960, pursuant to which claimant was sentenced for allegedly violating the laws of Cuba.

The judgment of the court recites that claimant and a number of other persons, who appear to be Cuban nationals, were found guilty of counter-revolutionary activities for attempting to "overthrow the Powers of the State through violent means." Following trials, various sentences were imposed upon the several defendants, except for three who were acquitted; claimant's sentence was ten years in prison, and "confiscation of all . . . properties."

It is undisputed that claimant's properties in Cuba were confiscated by the Government of Cuba on December 16, 1960 as a result of her conviction for violating the criminal laws of Cuba. The only issue presented in this respect is whether the confiscation is within the purview of Title V of the Act.

It is universally recognized and needs no citations to support the proposition that a State has inherent authority to punish persons convicted of violating its criminal laws by fines, imprisonment and confiscation of their property, or by any one or more of said penalties. The Commission consistently has adhered to this principle in its determinations under the various titles of the International Claims Settlement Act of 1949, as amended. Thus, the Commission has held that it is *a sine qua non* for a claimant to receive favorable action that a violation of international law must be established in a claim for the nationalization or other taking of property. (FCSC Dec. & Ann. 394, 399, 548 (1968).) And, generally speaking, punishment for the internal violation of a country's laws is not such a violation. The last citation (*id.* at 548) involves facts that are similar to those in the claim under consideration. In that case, claimant was convicted of violating the laws of Poland by attempting to smuggle, by means of his yacht, 60,000 zlotys out of Poland. He was sentenced to imprisonment and fine, and his yacht and the 60,000 zlotys were confiscated by Poland. The Commission denied the claim, stating that there had been neither a lack of due process nor unusual or excessive punishment; that Poland had the sovereign right to impose penalties for the violation of its laws, and that in doing so under the circumstances in this case, it incurred no liability under international law and was not required to compensate claimant for its actions. (For the full text of that decision, see *Claim of Walter Peter Milewski*, Claim No. PO-5890, Dec. No. PO-1921, 19 FCSC Semiann. Rep. 42 (July-Dec. 1963) .)

There is nothing in this record that establishes or even suggests that claim-

ant was denied due process of law at her trial in Cuba or that there was a denial of justice, as that term is understood under international law, such as an unfair trial. Moreover, it does not appear that the sentence of confiscation of claimant's properties was unusual or excessive punishment. Copies of communications from the United States Department of State to claimant's counsel indicate that claimant was accorded the rights at her trial to which she was entitled under international law. A communication, dated December 5, 1960, informed counsel that a prominent Cuban attorney who "had a great deal of experience in handling counter-revolutionary cases" had been engaged to represent claimant. It appears from another communication that a representative from the United States Embassy was not present at claimant's trial because "she did not want anyone there."

Upon consideration of the entire record, the Commission finds that the Government of Cuba violated no rule of international law by confiscating claimant's properties, and it concludes that the portion of the claim for the loss of the real and personal property confiscated pursuant to the Cuban court judgment of December 16, 1960 is not within the purview of Title V of the Act. Accordingly, this portion of the claim is denied.

The facts involving the loss of claimant's two-thirds interest in certain Cuban bonds warrant further discussion. The record shows that bonds in the face amount of \$23,000.00 of the issue known as 6% mortgage bonds of The Centro Asturiano de la Habana, Series A, had been on deposit with the First National City Bank of New York, Havana Branch, since 1947 in favor of claimant's late husband, Carmen V. Suarez, who died on April 19, 1950. In accordance with the duly probated will of Carmen V. Suarez, claimant was bequeathed his entire estate, and by assignment, dated December 2, 1952, she transferred a one-third interest in the bonds to her attorney, Harold C. Apisdorf, Esq. For the record it can be noted that his claim (CU-0626), based upon said one-third interest, *inter alia*, will be decided on its own merits. Accordingly, the Commission finds that claimant owned a two-thirds interest in 23 bonds of the said issue, each bond in the amount of \$1,000.00.

On September 17, 1960, the Cuban Government published in its Official Gazette Resolution 2 pursuant to Law 851, which listed as nationalized on that date the First National City Bank of New York. The Commission finds that upon the nationalization of the assets of the First National City Bank of New York, Havana Branch, the bonds in which claimant owned a two-thirds interest, on deposit with that bank, were taken by the Government of Cuba. This gave rise to a claim against the Government of Cuba for the value of the bonds. The Commission holds, however, that the confiscation order of December 16, 1960 against the claimant also effected a confiscation of her claim against Cuba, a chose in action constituting personal property, that had arisen on September 17, 1960. For the reasons stated above with respect to claimant's other personal property and her real property, the portion of the claim for these bonds is also denied.

PERSONAL INJURIES

Claimant has asserted a claim in the amount of \$50,000.00 for personal injuries allegedly sustained while imprisoned in Cuba. She states that prior to her trial in Cuba she was subjected to intensive questioning for three weeks which caused her to experience a heart attack; that women prisoners were beaten with gun butts and during one such occasion she was struck by a gun butt at the side of her head, causing severe injury to her left eye. She states that

require surgery to repair the damage and restore her hearing; and that she subsequently suffered a second heart attack while imprisoned in Cuba.

The record includes a statement from Dr. Jose C. Gros, dated January 19, 1968, in which he states that he had examined claimant in a Cuban prison in December 1960, that claimant complained of an earache "after being hit on the left ear by a soldier during a prison riot." The doctor stated that he had examined claimant again in January 1961 and found "bilateral ear infection with pus in both external ear canals, and the tympanic membranes were perforated." The doctor concluded that claimant had suffered a hearing "loss of 75-80% in the left ear, and 38-43% in the right ear."

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba...

The Commission has held that in a claim under Section 503 (b) of the Act, it must be established, *inter alia*, that the claimant suffered a disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See *Claim of Julio Lopez Lopez*, Claim No. CU-3259.)

The evidence of record does not support claimant's assertions that her injuries and present disability resulted from violations of international law by the Government of Cuba within the purview of Section 503 (b) of the Act. A copy of a letter to counsel from the Department of State, dated March 16, 1961, states in part: "I can only report that she was recently visited and that she was found to be well treated and in good health." In another letter to counsel from the Department of State, dated July 24, 1961, it was stated in part: "We have now received a report from the American Embassy at Bern informing us that a representative of the Swiss embassy in Habana visited Mrs. Geraldine Shamma De Carrera at the Guanajay Prison on June 15 and that Mrs. Shamma appeared to be in better health. She also confirmed that she was well treated, but complained that the prison food was insufficient."

Another letter to counsel from the Department of State, dated June 1, 1962, stated in part: "Mrs. Shamma declared (at an interview with a Swiss representative on May 2, 1962) she was not subjected to cruelty since she was an American. . . . Mrs. Shamma had no complaint against the prison authorities. . . . During her 18 months imprisonment, Mrs Shamma has never been subjected to propaganda or indoctrination in favor of the present regime." Although claimant did not appear to be as well on the occasion of the visit of May 2, 1962 nor subsequently, according to other Department of State correspondence, it does not appear from such correspondence or any other evidence of record that her deterioration in health was the result of any Cuban action in violation of international law. The record shows that claimant was hospitalized while in prison and given medical attention. The correspondence of record indicates claimant had recovered from her illness, was released from the prison hospital and returned to her cell in August 1962. Swiss representatives spoke with claimant personally after her release from the hospital and "were assured of her well-being."

Additionally, there is nothing to support claimant's contentions that she

sustained a disability from Cuban action in violation of international law from newspaper articles or the article the claimant wrote for the Saturday Evening Post. The newspaper articles report that claimant was released from prison in 1963 and that she was working to free other prisoners held by Cuban authorities, but there was not a word about any injuries or disability suffered by claimant. Claimant's article, published in the Saturday Evening Post, discusses a riot at the prison. Claimant wrote: "We started to riot. We broke up furniture and used table legs for clubs. I was right in the thick of it, shouting encouragement to the other women. We chased the guards out of our dormitory and barricaded the door with cots and mattresses. Then we kept them at bay by turning a tremendous fire hose on them. We were only 45 women, and they were several hundred *milicianos*, but we fought like demons. Finally, they turned off the water, and overwhelmed us. They dragged us out—wet, beaten and still screaming—and threw us on a bus. One woman had a broken arm. Another had her head split open. We were all cold and shivering."

Although claimant described her experiences immediately after arrest and after her trial, she made no mention in that article of being beaten with a gun butt or suffering a heart attack from severe intensive questioning. Describing her experiences while under arrest and during questioning by "G-2," claimant stated in that article: "I spent 16 days with G-2. I didn't sleep well, and I didn't eat very much, but they never laid a hand on me except to search me." Claimant described other women as being treated inhumanely, but not herself. At one point claimant did state that she sustained pain from "angina pectoris" but she stated she had refused transfer to the prison hospital.

Upon careful consideration of the portion of the claim for personal injuries, the Commission finds the record insufficient to warrant favorable action. Claimant was arrested and convicted for violating the criminal laws of Cuba. Claimant refused to have an American representative from the United States Embassy present at her trial. The record fails to corroborate claimant's present version as to how her disabilities arose. Although she may have suffered a heart attack and may have been disabled, it does not appear that this was the proximate result of Cuban Government actions in violation of international law.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of her claim for a disability under Section 503(b) of the Act. Accordingly, this portion of the claim is also denied.

Dated at Washington, D.C., Sep. 3, 1969.

IN **THE** MATTER OF THE **CLAIM** OF PILGRIM PLASTICS
CORPORATION

Claim No. CU-1979—Decision No. CU-3870

Purchase by the Government of Cuba of machines consigned to a Cuban Corporation by American corporation under a contract requiring payment by the consignee of certain royalties for the use thereof, constituted an assumption by the Government of the obligation of the consignee under the contract.

Failure by the Government of Cuba to permit Cuban consignee to honor its obligation to American corporation constituted an intervention in the con-

tractual rights of the American corporation and gave rise to a valid claim under Title V of the Act.

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 \$570,505.29, was presented by PILGRIM PLASTICS CORPORATION based upon the asserted loss of payment for merchandise shipped to a consignee in Cuba and royalties due from said consignee.

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)]¹, 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.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An authorized officer of claimant has certified that claimant was organized under the laws of New York, and that at all pertinent times all of the outstanding capital stock of claimant was owned by three persons in equal shares. The record shows that two of these three stockholders were nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

Merchandise shipped to Cuba

The record shows that claimant concluded certain agreements with a Cuban corporation, Industria Sinesio Rojo, S.A., hereafter called the consignee, discussed below in connection with the portion of the claim for royalties. As a result of that relationship, claimant shipped to the consignee in Cuba a "complete mold for machinery to manufacture plastic heels" on August 6, 1959, three "Cavities for the manufacture of plastic heels," each on two occasions,

* This decision was entered as the Commission's Final Decision on October 8, 1969.

October 28, 1959, and December 16, 1959, and another "Cavity" on February 26 1960. The record contains copies of invoices, bills of lading and air way-bills, as well as extracts from claimant's records and statements from officials of claimant concerning said shipments. The following indicates the shipment dates, and the amounts thereof, on the basis of the evidence of record:

<i>Shipment date</i>	<i>Amount</i>
Aug. 6, 1959 -----	\$ 9,750.00
Oct. 28, 1959 -----	1,650.00
Dec. 16, 1959 -----	1,650.00
Feb. 26, 1960 -----	550.00
Total -----	<u>\$13,600.00</u>

Extracts from claimant's records show that the consignee made a number of payments on account of the foregoing debt in 1959 and 1960, which payments aggregated the amount of \$8,100.00. Accordingly, the Commission finds that the net amount due from the consignee was \$5,500.00.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See *Claim of The Schwarzenbach Huber Company*, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-December 1966]; and *Claim of Etna Paz colana. Corporation*, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimants property was lost as a result of intervention by the Government of Cuba. While it is not clear from the record, it appears on the basis of normal business practices that the payments made by the consignee in the amount of \$8,100.00 should be credited on account of the first shipment in the amount of \$9,750.00, thereby reducing that amount to \$1,650.00. In the absence of evidence to the contrary, the Commission finds that claimant's losses occurred 30 days after the shipment dates, except that with respect to losses that would otherwise be found to have occurred prior to September 29, 1959, the effective date of Law 568, the Commission finds that such losses occurred on September 29, 1959. Accordingly, claimant's losses with respect to the shipments to the consignee may be summarized as follows:

<i>Date of loss</i>	<i>Amount</i>
Sept. 29, 1959 -----	\$1,650.00
Nov. 28, 1959 -----	1,650.00
Jan. 16, 1960 -----	1,650.00
Mar. 26, 1960 -----	550.00
Total -----	<u>\$5,500.00</u>

Royalties

Claimant has computed its claim for royalties due from the consignee in the amount of \$565,005.29 on the basis of contracts entered into with the consignee. The basic contract was concluded in Cuba on April 16, 1959, and contained, *inter alia*, the following provisions (copies of the contracts having been submitted by claimant) :

1. Claimant agreed to furnish the consignee with certain necessary equipment to be used by the consignee in manufacturing and producing plastic heels, and to give the consignee all technical knowledge, advice and supervision as aids to such production.
2. The consignee agreed to pay claimant 7 ½ cents for each pair of heels made with the molds, accessories and equipment furnished by claimant, and guaranteed a minimum payment for the duration of the contract based upon a production of at least 375,000 pairs of heels per year at 7 ½ cents per pair for each machine furnished by claimant.
3. The contract was to remain in force for 10 years.
4. The consignee agreed to submit to claimant monthly reports of production, indicating amounts due claimant.
5. Claimant agreed not to furnish equipment to any other manufacturer in Cuba so long as the consignee satisfied all of its contract obligations.

Another contract between claimant and the consignee was executed on January 28, 1960, for the purpose of clarifying the original contract and provided, in pertinent part, as follows:

- a. The consignee was obliged to pay claimant royalties only for heels made with claimant's equipment and not on the basis of the number of pairs of heels sold by the consignee.
- b. The consignee was required to make monthly payments to claimant for royalties due for the previous month, and to make such payments to a bank designated by claimant.
- c. The consignee was authorized to enter into agreements with a subcontractor in Cuba for the manufacture of said plastic heels, but the consignee was to remain bound by the terms of the agreements with claimant.
- d. The consignee was authorized to purchase any equipment from claimant and if it did, the royalties due with respect to production from such purchased equipment was to be computed at the rate of 5 cents per pair of heels while production from claimant's equipment was to remain at the 7 ½ cents per pair rate.

The record contains copies of monthly reports furnished to claimant by the consignee for the period May 11, 1959, to September 17, 1960, showing that the consignee produced 1,130,730 pairs of heels during that period.

Claimant asserts that its claim for royalties amounts to \$565,005.29 on the basis of two machines at the guaranteed minimum rates for the duration of the contract according to its express provisions. Accordingly, claimant's computations are as follows:

April 1959 to Mar. 31, 1960—847,326 pairs of heels were produced—at 7½ cents -----	\$ 63,549.45
Less: Amounts paid by the consignee in 1959 -----	4,794.16
	58,755.29
Contract minimum of 375,000 pairs per year for two machines:	
Apr. 1, 1960 to Mar. 31, 1961 -----	750,000 pairs
Less: Amount above produced during this period -----	283,404 pairs
	466,596 pairs
Consequently, minimum charge applies 750,000 pairs at 7½ cents -----	56,250.00
Minimum charge for 8 more years from Apr. 1, 1961, to Mar. 31, 1969 -----	450,000.00
Total -----	\$565,005.29

The record indicates that the consignee stopped production on September 17, 1960, and the record failed to indicate the reason for the termination of production on that date. The Commission, therefore, communicated with counsel for claimant under date of November 6, 1968, and suggested appropriate explanations as well as evidence to establish that the claim for royalties covering the period ending March 31, 1969, fell within the purview of Title V of the Act. When no response was received either to that letter or a followup letter of January 2, 1969, the Commission communicated with claimant directly to afford it another opportunity to support its claim for royalties. Claimant's response of March 20, 1969, related to the issue of nationality, which was also mentioned in the Commission's letters, although by its terms it purported to include all matters referred to in the Commission's communication of November 6, 1968. No response was made to the Commission's inquiry as to the major portion of the claim based upon royalties.

The Commission holds that the implementation of Law 568 constituted an intervention by the Government of Cuba in the contractual rights of claimant with respect to the royalties. (See *Claim of Jantzen, Inc.*, Claim No. CU-1531.) The record indicates the consignee-company was not actually nationalized but that it sold the equipment furnished to it by claimant to the Cuban Government sometime after the adoption of Law 568. The written contract and its later amendment between the claimant and the consignee, as above mentioned, not only required the payment of one of two different types of royalties depending on whether the machines had been purchased by the Cuban company, but also required the original consignee to remain liable for royalties and other payments when permission was granted it to transfer these assets to a new company. Obviously the consignee could not alter claimant's rights to royalties either by stopping production or by disposing of the equipment in question. The Commission finds that by virtue of the purchase of the equipment, Cuba succeeded to the obligations of the consignee pursuant to the written contract, as amended, with claimant.

The record shows, as indicated above, that the equipment thus acquired by Cuba included appropriate machinery, etc., for manufacturing plastic heels. In the absence of evidence establishing precisely how many pairs of plastic heels were made with claimant's machinery and how many with the consignee machinery, the Commission finds that claimant is entitled to an allowance

based upon cents per pair of heels on the minimum basis provided in the contract for the period from April 1, 1969, to March 31, 1969.

Based upon the terms of the contracts and in the absence of evidence to the contrary, the Commission finds that claimant's losses for each month of production occurred on the 15th day of the following month when payment became due, except that with respect to losses that would otherwise be found to have occurred prior to September 29, 1959, the effective date of Law 568, the Commission finds that such losses occurred on September 29, 1959.

The record includes statements made by an officer of claimant to the Department of State under date of May 3, 1962, in which claimant's asserted losses as of March 31, 1962, were set forth. It appears from those statements that the consignee paid claimant on account of royalties due the amounts of \$2,675.78 and \$2,118.38 in August 1959 and December 1959, respectively. In the absence of evidence to the contrary, the Commission finds that the payment made in August 1959 should be credited against losses found to have occurred on September 29, 1959, and October 15, 1959, respectively. (See *Claim of Richard G. Milk and Juliet C. Milk*, Claim No. CU-0923 1967 FCSC Ann. Rep. 63) Accordingly, claimant's losses of royalties aggregated 3396,25529 which together with the balance due on the purchase of equipment of \$5,500.00 total \$401,255.29.

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 respective dates 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:

<i>Front</i>	<i>On</i>
Sep. 29, 1959	\$ 28,870.79
Oct. 15, 1959	4,824.37
Nov. 15, 1959	8,457.30
Nov. 28, 1959	1,650.00
Dec. 15, 1959	11,081.63
Jan. 15, 1960	1,755.00
Jan. 16, 1960	1,650.00
Mar. 26, 1960	550.00
Apr. 15, 1960	5,416.20
	64,255.29
and from May 15, 1960, through Apr. 15, 1969, at \$3,125.00 for each of the 108 months in this period - -	337,500.00
Total	\$401,755.29

CERTIFICATE OF LOSS

The Commission certifies that PILGRIM PLASTICS CORPORATION 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 Four Hundred One Thousand Seven Hundred Fifty-five Dollars and Twenty-nine Cents (\$401,755.29) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Date at Washington, D.C., Sept. 3, 1969.

IN **THE** MATTER OF **THE** CLAIM OF WILLIAM A. POWE

Claim No. CU-0502—Decision No. CU-4511

The values of each item of a claim must be determined separately on its own merits.

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 WILLIAM A. POWE, in the amended amount of \$9,924,315.30 based upon asserted losses in connection with ownership of stock in several nationalized Cuban corporations, liability as guarantor for unpaid debts of nationalized Cuban corporations, a debt of the Cuban Government, and a yacht. 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.

Claimant has submitted evidence in the form of stock certificates, financial statements, lists of stockholders, inventories, maps, affidavits, correspondence, excerpts from the Cuban Official Gazette, and documents regarding the nationalization of enterprises and the appointment of administrators therefor. On the basis of such evidence the Commission makes its findings of fact regarding the various items of this claim under separate headings, as set forth 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 pro^Perty and equitable to the claimant." This phraseology does not differ from the inter-

national 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.

1. *Willys Distributors, S.A.*

Claimant asserts a loss of \$611,457.69 as the owner of a stock interest in this enterprise, which was incorporated in Cuba on July 18, 1945 and held the Cuban franchise for the sale of Jeeps and other vehicles manufactured by Willys Overland Motor Company of Ohio. The Commission finds that claimant was the owner of 4,963 shares of stock in the corporation, of a total of 8,532 shares outstanding, on October 24, 1960 when the enterprise was nationalized by the Government of Cuba under Resolution No. 3 issued pursuant to Law No. 851.

Claimant has submitted, as the most recent available financial statement of the corporation, a balance sheet as of June 30, 1959, which reflects the following:

Assets

Cash on hand and in banks		\$ 55,780.64	
Notes Receivable	\$ 55,031.53		
Less: Discounts	2,857.14	52,174.39	
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Accounts Receivable			
Clients	\$434,782.54		
Agencies	12,238.04		
Others	32,579.41	479,599.99	
Inventory		348,879.66	
Merchandise in Transit		472,053.95	\$1,408,488.63
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Piezas y Accesorios, K-W, Inc.		\$225,320.41	
Sociedad Inmobiliaria Raritan		11,051.70	
Kaiser Willys Motors of Cuba, Inc.		1,008.87	
Importers of Jeeps, Inc.		2,056.53	
Vehicle Assembly Co. ACEA, Inc.		4,809.42	
Anglo-Cuban Distributors Co. ACO, Inc.		41,062.68	285,309.61
Properties		\$200,614.40	
Less: Reserve for Depreciation		68,578.40	132,036.00
Investments			23,908.65
Items in Suspense			58.38
Deferred Assets			10,510.53
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\$1,860,311.80			

Liabilities, Capital and Profits

Current Liabilities

The First National City Bank of New York		\$190,339.89	
Accounts Payable		141,784.33	
Willys Overland Export Corp.		267,186.08	
Vacation Tax Payable		4,749.66	
Taxes Payable		24,037.23	\$ 628,097.19

Talleres y Servicio, S.A.		15,455.51
Service Guaranteed Deposits		16,680.44
Mortgages Payable		10,000.00
Dividends Declared but not paid		85,320.00
Reserve for Contingencies		130,000.00
Provision for Profits Tax and Excess Profits Tax		8,908.60
		<u>\$ 894,461.74</u>
Capital:		
Authorized 20,000 shares of \$100 each		
Issued 8,537 shares	\$853,700.00	
In Treasury 5 shares	500.00	\$ 853,200.00
Surplus:		
Balance, July 1, 1958	\$183,097.83	
Less Dividends Declared but not paid Acta No. 67 of September 29, 1958	85,320.00	
	<u>97,777.83</u>	
Plus Net Profit, July 1, 1958- June 30, 1959	14,872.23	112,650.06
		<u>\$1,860,311.80</u>

Deducting the liabilities from the assets as shown in the above balance sheet would indicate a net worth or book value of \$965,850.06. However, among the liabilities is an item designated as "Reserve for Contingencies" in the amount of \$130,000.00. Since this appears to be a cash reserve which would have been available for distribution among stockholders in the event of liquidation, it will be treated in the calculation of net worth as a part of the surplus. Therefore, the net worth or book value of the corporation is found to have been \$1,095,850.06.

The Commission finds that the book value as calculated is the most appropriate measure of the value of the corporation at the time of loss. With 8,532 shares of stock outstanding, the value of each share was \$128.44, and the value of claimant's 4,963 shares was \$637,447.72. The Commission concludes that by reason of his ownership interest in Willys Distributors, S.A., claimant suffered a loss in that amount on October 24, 1960 when the corporation was nationalized by the Government of Cuba, within the meaning of Title V of the Act.

Claimant suffered an additional loss for his share of the unpaid dividends of \$85,320.00 which had been declared, as set forth in the balance sheet. Claimant's share, in the amount of \$49,630.00, constituted a debt owed to claimant by a nationalized enterprise and represents an additional loss suffered by claimant on October 24, 1960 within the meaning of Title V of the Act, making a total loss for claimant of \$687,077.72.

2. *Piezas y Accesorios, K-W, S.A.*

The claimed loss with respect to the enterprise *Piezas y Accesorios, K-W, S.A.*, which sold parts and accessories for vehicles sold by Willys Distributors, Inc., is \$176,260.01. The Commission finds that this corporation was nationalized by the Government of Cuba on October 24, 1960 under Resolution No. 3 issued pursuant to Law No. 851, at which time it had 2,205 shares of stock outstanding and claimant owned 1,281 shares. Claimant has submitted corporation's balance sheet as of June 30, 1959, the most recent available,

Assets

Cash on hand and in banks	\$ 48,656.23	
Merchandise sold but not collected for	5,419.22	
Accounts Receivable		
Clients in Havana	\$64,834.64	
Clients in Camaguey	9,283.21	
Agents	42,254.31	
Others	15,484.87	131,857.03
Inventory	331,326.13	
Merchandise in Transit	25,588.84	\$542,847.45
Talleres y Servicio, S.A.	\$ 26,878.56	
Motores Kaiser Willys de Cuba, S.A.	2,000.00	
Cia. Distribuidora Anglo-Cubana Aco., S.A.	157.50	29,036.06
Real Estate	\$ 12,158.95	
Less: Reserve for Depreciation	4,208.91	7,950.04
Investments		100.00
Organization Expense		1,907.90
Deferred Assets		315.73
Time Payments		196.95
		<u>\$582,354.13</u>

Liabilities, Capital and Surplus

Current Liabilities		
Willys Overland Export Corp.	\$ 19,884.43	
Accounts Payable	13,508.58	
Vacation Tax	1,701.25	
Other Taxes Payable	6,792.13	
Commissions Payable	214.47	\$ 42,100.86
Willys Distributors, S.A.	\$225,320.41	
Sociedad Inmobiliaria Raritan	6,354.34	231,674.75
Dividends Declared but not paid		22,050.00
Provision for Profits Tax		5,180.14
		<u>\$301,005.75</u>
Capital: 2,205 shares of \$100 par value issued		\$220,500.00
Surplus:		
Balance July 1, 1957	\$ 59,552.40	
Less Dividends Declared	22,050.00	
	<u>37,502.40</u>	
Plus Net Profit July 1, 1958 to June 30, 1959	23,345.98	60,848.38
		<u>\$582,354.13</u>