

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

IN THE MATTER OF THE CLAIM OF

JANET H. KLINE, INDIVIDUALLY
AND AS EXECUTRIX OF THE ESTATE
OF ALVIN W. KLINE, DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2158
Claim No. CU-2159

Decision No. CU 4708

Counsel for claimants:

Richard Katcher, Esq.

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 \$1,079,037.96, were presented on April 26, 1967 by JANET H. KLINE, INDIVIDUALLY and as EXECUTRIX OF THE ESTATE OF ALVIN W. KLINE, DECEASED, and are based upon the asserted loss of stock interests in certain Cuban enterprises, real property, household furnishings, a debt owed by a nationalized Cuban enterprise and bonds.

Claimant, JANET H. KLINE, has been a national of the United States since birth. ALVIN W. KLINE became a national of the United States by naturalization on September 15, 1927. He died testate on January 6, 1967. The decedent's heirs are nationals of the United States.

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 Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

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.

Stock Interest

The evidence establishes and the Commission finds that JANET H. KLINE and ALVIN W. KLINE, now deceased, jointly owned 2,691 shares of stock in Viveres, S.A., and all of the stock interest in Inversiones Pancer, S.A. The Commission further finds that JANET H. KLINE owned an additional

454-1/2 shares of stock in Viveres, S.A. which she inherited on December 4, 1962 from her mother, Emily M. Hartman, who was a national of the United States at the time of loss. The aforementioned enterprises were intervened or nationalized by the Government of Cuba on the following dates:

<u>Enterprise</u>	<u>Date of Loss</u>
Viveres, S.A.	June 30, 1962
Inversiones Pancer, S.A.	November 17, 1961

Since these Cuban firms were organized under the laws of Cuba, they do not qualify as corporate "nationals 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 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 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.

Viveres, S.A.

The record includes a copy of a balance sheet for this enterprise as of June 30, 1960, which reflects the following in Cuban pesos, which were on a par with the United States dollar. No later information was submitted. However, the Commission is aware that the Cuban nationalization programs depressed private earnings in 1960 and thereafter. Viveres, S.A. was engaged in wholesaling edible oils and meat packing.

ASSETS

Inventory	\$ 85,715
In Transit	62,629
Accounts Receivable (After Reserve of \$10,000)	444,757
Bill Receivable	
Undiscounted	--
Discounted	8,022
Bills & Accounts Receivable	55,349
Cash	99,835
Other Current Assets:	
Recoverable Custom House Deposits	<u>6,300</u>

CURRENT ASSETS \$762,607

Furniture and Fixtures	13,874
Deferred Charges	9,253
Trade Marks	6,000
Investments	8,708
Machinery and Equipment	<u>73,806</u>

TOTAL ASSETS \$874,248

LIABILITIES

Trade Paper Discounted	\$ 8,022
Accounts Payable	105,503
Sundry Accrued Liabilities	--
Payable re merchandise in transit	58,664
Paid Rest	5,389
Accrued Commissions	9,806
Profit & Sundry	--
Taxes	<u>58,620</u>

CURRENT LIABILITIES \$246,004

Reserve for Depreciation	50,802
Surplus	47,442
Capital Paid Up	<u>530,000</u>

TOTAL LIABILITIES \$874,248

The Commission finds that under normal circumstances the furniture and fixtures, and machinery and equipment should be depreciated, and the Reserve for Depreciation, \$50,802, is not a capital item but should be deducted from Assets.

Thus, the calculation of net worth of Viveres, S.A. is as follows:

Total Assets	\$823,446.00
Less Liabilities	<u>246,004.00</u>
Net Worth	\$577,442.00

The Commission finds, based upon the evidence of record, that Viveres, S.A. had 5,300 shares of stock outstanding on the date of loss and concludes

that the dollar loss sustained in connection with the ownership of a stock interest in Viveres, S.A. was \$108.9513 per share of stock. Accordingly the Commission finds that the 2,691 shares had a value of \$293,187.95 and the 454.5 shares had a value of \$49,523.37, on the date of loss.

Inversiones Pancer, S.A.

Inversiones Pancer, S.A. was engaged in meat packing.

The record includes a copy of a balance sheet for this enterprise as of November 17, 1961, the date of loss, which reflects the following:

A S S E T S

Cash in bank and on hand		\$ 2,563.99
Accounts receivable		663.16
<u>INVENTORIES - cost</u>		
Merchandise	\$ 25,960.25	
Raw material and in Process	22,917.15	
Package material	<u>76,841.96</u>	125,719.36
Land and buildings		305,223.18
Plant equipment, furniture and fixtures		192,015.15
Other assets		<u>450.00</u>
		<u>\$626,634.84</u>

L I A B I L I T I E S

Capital and Surplus

Mr. Alvin W. Kline	\$625,000.00
Surplus	<u>1,634.84</u>
	<u>\$626,634.84</u>

The Commission finds, based upon the evidence of record, that Inversiones Pancer, S.A. had a net worth of \$626,634.84 on the date of loss, and that JANET H. KLINE and ALVIN W. KLINE now deceased, suffered a loss in that aggregate amount.

Other Securities

Claim is also made for the loss of interests in the following:

- a) 24,405 shares Minimax Super-Mercados, S.A., herein-
after referred to as "Minimax";
- b) 357 shares Industrial Bank of Havana, hereinafter
referred to as "Industrial".

The Commission has previously held that the properties owned by Minimax and Industrial were taken by the Government of Cuba on September 1, 1960 and October 13, 1960, respectively. It further held that the value of a share of Minimax was \$1.0023 and the value of a share of Industrial was \$142.1216. (See Claim of Libby Holman Reynolds, Claim No. CU-1384, and Claim of Elmer E. Keller and Isabel Keller, Claim No. CU-1615 which are incorporated herein by reference.)

On the basis of evidence of record, the Commission finds that the claimants come within the terms of the Reynolds and Keller decisions; that each owned a one-half interest in 24,405 shares of capital stock of Minimax and 357 shares of Industrial.

The Commission further finds that the 24,405 shares of Minimax had a value of \$24,461.14 and the 357 shares of Industrial had a value of \$50,737.42 on the respective dates of loss.

Real Property

Claimants further state that they lost an investment in real property valued at \$115,199.26. They submitted among other things, a statement from Roger Ravelo Ramos, President of the Board of Assessment for Marianao; affidavit of Alberto B. Hevia; letter from Ignacio Soto Beade, Architect, dated August 9, 1965; statement of Olga Pando, President of Inmobiliaria Derovara, S.A. dated April 11, 1967; and a statement of JANET H. KLINE.

Based upon the entire record, the Commission finds that claimants, JANET H. KLINE and ALVIN W. KLINE, now deceased, each owned a one-half interest in a house at 15-A-22 on 230th Street, Reparto Alturas de Jaimanitas, Marianao; and a cooperative apartment at 1st Street and 38th Avenue, Varadero Beach, Matanzas. The Commission further finds that these properties were taken by the Government of Cuba on July 1, 1960, as asserted by claimant

JANET H. KLINE.

CU-2158
CU-2159

In arriving at the value of the real property consideration was given to all of the evidence of record, including that described above, and evidence available to the Commission of the value of similar properties in Cuba. The Commission finds that at the time of loss the value of the house at 15-A-22 on 230th Street, Reparto Alturas de Jaimanitas, Marianao, was 75,000.00 and the land upon which it was situated was \$10,199.26. The Commission further finds that the value of the cooperative apartment at 1st Street and 38th Avenue, Varadero Beach, Matanzas, was \$30,100.00.

Personalty

Claimant also asserts the loss of certain household furnishings, including silverware, crystal, antiques, and oil paintings. The record includes a list of the household furnishings purchased with approximate prices paid for each item.

On the basis of the entire record the Commission finds that claimants JANET H. KLINE and ALVIN W. KLINE, now deceased, each owned a one-half interest in the household furnishings which were taken by the Government of Cuba on July 1, 1960.

The Commission further finds that the value of the household furnishings, after depreciation except with regard to the silverware, crystal, antiques and paintings, amounted to \$34,306.84 on the date of loss.

Debt Owed by Nationalized Cuban Enterprise

Claimant further states that Compania Cubana de Aviacion, S.A., a Cuban enterprise that was nationalized by the Government of Cuba on July 15, 1961, owed them \$487.36 as a refund on 2 unused airplane tickets and the Commission so finds. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Bonds

With respect to the portion of the claim that is based upon 4 gold bonds of Compania Cubana Electricidad, claimants failed to submit any evidence of ownership. The Commission advised claimants as to the type of evidence proper for submission to establish this claim under the Act. No evidence was received.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership and certifiable loss in bonds of the Cuban Electric Company. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

The Commission concludes that JANET H. KLINE and ALVIN W. KLINE, now deceased, suffered losses within the meaning of Title V of the Act as follows:

JANET H. KLINE

Viveres, S.A.	June 30, 1962	\$196,117.34
Inversiones Pancer, S.A.	November 17, 1961	313,317.42
Minimax Super-Mercados, S.A.	September 1, 1960	12,230.57
Industrial Bank of Havana	October 13, 1960	25,368.71
Realty	July 1, 1960	42,599.63
Apartment	July 1, 1960	15,050.00
Furnishings	July 1, 1960	17,153.42
Debt	July 15, 1961	<u>243.68</u>
		\$622,080.77

ALVIN W. KLINE, now deceased

Viveres, S.A.	June 30, 1962	\$146,593.98
Inversiones Pancer, S.A.	November 17, 1961	313,317.42
Minimax Super-Mercados, S.A.	September 1, 1960	12,230.57
Industrial Bank of Havana	October 13, 1960	25,368.71
Realty	July 1, 1960	42,599.63
Apartment	July 1, 1960	15,050.00
Furnishings	July 1, 1960	17,153.42
Debt	July 15, 1961	<u>243.68</u>
		\$572,557.41

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 cases, it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amounts asserted by claimants. However, in determining the amounts of loss sustained, the Commission is not bound by any greater or lesser amount which may be asserted by claimants as the extent thereof.

CERTIFICATION OF LOSS

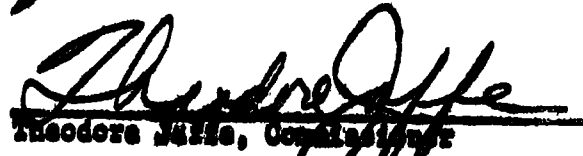
The Commission certifies that JANET H. KLINE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Hundred Twenty-Two Thousand Eighty Dollars and Seventy-Seven Cents (\$622,080.77 with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JANET H. KLINE AS EXECUTRIX OF THE ESTATE OF ALVIN W. KLINE, 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 Five Hundred Seventy-Two Thousand Five Hundred Fifty-Seven Dollars and Forty-One Cents (\$572,557.41) 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

8 APR 1970


Lois S. Carlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO REASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)