

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

IN THE MATTER OF THE CLAIM OF

STANLEY WAX

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2174

Decision No. CU -6142

Counsel for claimant:

Tart and Wald
By Richard Wald, Esq.

Appeal and objections from a Proposed Decision entered on April 7, 1971.
Hearing scheduled and cancelled:

Hearing on the record held on September 15, 1971.


FINAL DECISION


Under date of April 7, 1971, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$235,703.96 plus interest. Subsequently, counsel for claimant objected to the Proposed Decision without indicating the basis for the objections. Under date of June 4, 1971, counsel stated that he is attempting to obtain new evidence in support of the claim. To date no new evidence has been filed.

Upon consideration of the entire record, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of April 7, 1971 is affirmed in all respects.

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

SFP 15 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 \$512,600.60, was presented by STANLEY WAX based on the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

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

Claimant asserts the following losses:

100% stock interest in Tejidos Mina, S.A., a Cuban corporation	\$327,275.00
House and lot in Havana	120,444.00
Furniture and personal belongings	31,877.00
Land in Santa Maria del Mar, Guanabacoa	10,000.00
3 lots in Alamar-Costa Azul, Guanabacoa	15,219.60
Insurance policy	<u>7,785.00</u>
Total	<u>\$512,600.60</u>

The record includes a substantial amount of supporting evidence, discussed in detail below. On the basis thereof, the Commission finds that claimant owned certain items of real and personal property in Cuba. Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Based upon the evidence of record, the Commission finds that claimant and his wife, a nonnational of the United States, each owned a one-half interest in the properties herein as indicated hereafter.

No claim has been filed by claimant's wife or on her behalf. In any event, she would be ineligible pursuant to the express terms of Section 504 which provides as follows:

(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.

Tejidos Nina, S. A.

Based upon stock certificates, contemporary correspondence with the Department of State, and an affidavit, dated September 25, 1967, from a former officer of Tejidos Nina, S.A., hereafter called the Cuban corporation, the Commissioner finds that claimant and his wife jointly owned all of the outstanding capital stock of the Cuban corporation. That corporation was engaged in the business of buying and selling textiles and clothing on a retail level in a rented store in Cuba.

On October 24, 1960, the Cuban Government published Resolution 3 pursuant to Law 851, which listed as nationalized the Cuban corporation.

Since Tejidos Nina, 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.)

Claimant asserts that the Cuban corporation had a value of \$327,275.00, computed as follows:

Net worth	\$237,275.00
Goodwill and fixtures not recorded on the Cuban corporation's books	60,000.00
Profit for the period July through September 1960 likewise not recorded	30,000.00

In support of the asserted net worth, claimant has submitted copies of the Cuban corporation's balance sheet as of June 30, 1960 and its profit and loss statement for the period ending June 30, 1960 (Exhibit 4). These financial statements are certified as accurate by the firm of accountants that prepared them (Exhibit 5).

The Commission made inquiries under date of August 29, 1967 concerning the unrecorded \$60,000.00 for goodwill and fixtures and the unrecorded profit of \$30,000.00. Claimant's response was that the \$60,000.00 was a private transaction involving a cash payment to a firm whose business the Cuban corporation had purchased because the business location was desirable. Claimant identified this payment as "Key" money and stated that this transaction was never recorded.

The evidence includes an affidavit, dated April 19, 1967, from an individual who has personal knowledge of the facts because he had been offered an opportunity to acquire an interest in Tejidos Nina, S.A. when it was being formed and when the acquisition of the business of the other Cuban corporation was being negotiated (Exhibit 7). Claimant has also submitted an affidavit, dated July 8, 1968, from a person who actually participated in the transaction in which the \$60,000.00 was paid. Affiant states that he acted through a power of attorney from his mother, who owned the real property in which the desired store was located; and that he personally witnessed the payment by claimant while engaged in leasing the premises to claimant, which resulted in a 20-year lease. These circumstances are corroborated by the affidavit of a senior member of the accounting firm that prepared the Cuban corporation's financial statements (Exhibit 5).

With respect to the asserted profit of \$30,000.00 for the period between the date of the balance sheet and the date of nationalization of the Cuban corporation, claimant relies on a letter of October 9, 1967 from a firm of accountants other than the one that prepared the balance sheet. That firm states that the said profit was estimated on the basis of the earnings for the period ending June 30, 1960, which was \$54,793.49 (Exhibit 4). The estimate proceeds from the premise that the period was 6 months ending June 30, 1960, which is not apparent either from an examination of the profit and loss statement or from the said affidavit of a senior member of the accounting firm that prepared the profit and loss statement. On this basis, the other accounting firm estimates that the profit for the period from June 30, 1960 to October 25, 1960 was approximately \$35,000.00, not \$30,000.00 as claimed herein.

The Commission has carefully considered the entire record relating to the asserted value of the Cuban corporation; namely, \$237,275.00 for net worth, \$60,000.00 for unrecorded goodwill and fixtures, and \$30,000.00 for profit for the period between June 30, 1960 and the date of loss. The Commission makes the following findings:

1. Net worth of the Cuban corporation

The balance sheet as of June 30, 1960, expressed in pesos, shows that the total assets of the Cuban corporation amounted to \$289,739.95, the Cuban peso being on a par with the United States dollar. The assets included, inter alia, "Investments" in the amount of \$100.00, which was indicated by counsel in his letter of March 2, 1970 as representing a bond of the Cuban Electric Company. Inasmuch as the Cuban Electric Company is a national of the United States (see Claim No. CU-2578), the Commission suggested the submission of evidence to establish that this receivable was secured by property taken by Cuba, a prerequisite under Section 505(a) of the Act with respect to a claim for a debt due from an American concern. No response has been received to date although counsel was given a further opportunity to support this item. In the absence of evidence to the contrary, the Commission finds that this debt of \$100.00 did not constitute an asset of the Cuban corporation taken by Cuba which can be considered by the Commission within the meaning of Title V of the Act. Accordingly, the Commission finds that the assets aggregated \$289,639.95, as shown in the balance sheet.

2. Goodwill and Fixtures

The Commission further finds that the Cuban corporation owned other assets that were not recorded in the balance sheet; namely, goodwill and fixtures in the amount of \$60,000.00.

3. Profit

The Commission concludes, however, that the estimated profit of \$30,000.00 for the period from June 30, 1960 to the date of loss is not established by the evidence of record. The Commission finds that while the Cuban corporation earned profits for the period ending June 30, 1960, whether

or not this was a six-month period, the evidence does not support a finding that additional profit in the amount claimed was earned during the subsequent period because the evidence, at best, is speculative.

Accordingly, the Commission finds that the assets of the Cuban corporation on October 24, 1960, the date of loss, aggregated \$349,639.95.

The balance sheet shows that the liabilities of the Cuban corporation were \$52,464.94. Counsel's letter of March 2, 1970 was accompanied by a list of the various creditors of the Cuban corporation, indicating that \$20,475.63 was owed to American firms. Counsel stated that to the best of claimant's knowledge, claimant paid all of the debts due the American firms. No evidence has been submitted to support this assertion although counsel and claimant were afforded ample opportunity to supply it. In the absence of more convincing proof, the Commission finds that the liabilities of the Cuban corporation on the date of loss aggregated \$52,464.94.

The Commission therefore finds that the net worth of the Cuban corporation or the excess of its assets over its liabilities on the date of loss was \$297,175.01. Therefore claimant's one-half interest had a value of \$148,587.51.

House and Lot

The evidence establishes and the Commission finds that claimant and his wife each owned a one-half interest in a house and lot at 1913-198 Street, Country Club, Havana, Cuba, the asserted value of which was \$120,444.00.

It appears from the evidence of record that claimant left Cuba on October 25, 1960, immediately after the Cuban corporation was nationalized. At that time claimant's home was occupied by a Minister from Israel. Subsequently, claimant was informed that in August 1961 the Minister was asked by the Government of Cuba to occupy a house in another area and claimant's home was taken by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the house and lot were taken by Cuba on August 15, 1961.

The evidence includes a deed, dated July 11, 1958, pursuant to which claimant and his wife acquired the lot at a cost of \$20,148.96 (Exhibit 8). Subsequently, the Cuban Government assessed the lot at \$40,296.00 (Exhibit 9). In an effort to reduce his tax burden, claimant appealed and was successful in reducing the assessment to \$30,224.04 as of July 7, 1959 (Exhibit 10).

The record also includes an affidavit, dated March 24, 1967, from the architect who built a house on the lot in 1959 at a cost of \$60,000.00 (Exhibit 11). The lot measured 5,037 square varas, equivalent to 3,622.35 square meters. According to the architect, the value of a square vara in 1959 was \$12.00 based upon the costs of other lots in the same area.

Claimant has submitted a number of photographs of the property showing the exterior as well as the interior of the house (Exhibits 12a through 12f). The house won an architectural award.

Upon consideration of the entire record, the Commission finds that claimant's valuation is fair and reasonable. Accordingly, the Commission finds that the value of the house and lot on August 15, 1961, the date of loss, was \$120,444.00. Therefore, claimant's one-half interest therein had a value of \$60,222.00.

Furniture and Personal Belongings

The evidence establishes and the Commission finds that claimant and his wife each owned a one-half interest in the furniture and other items of personal property situated in their home in Cuba. The Commission further finds that said personal property, including an automobile, was taken by Cuba on August 15, 1961 when the house and lot were taken.

Claimant has submitted a certified list of the various items of personal property, indicating the approximate costs thereof which aggregate \$31,877.00 (Exhibit 13). An examination of the list containing 111 items indicates that practically every one was subject to depreciation at 5% per year, except the clothing costing \$1,000.00 which was subject to a 20% per year depreciation rate. The record also includes affidavits from the interior decorator who

was engaged in 1959 to select the home furnishings (Exhibit 14), and from the architect who built the house and participated in selecting the furnishings (Exhibit 11).

Based upon the entire record, the Commission finds that the items of personal property had the following values on August 15, 1961, the date of loss:

Items costing \$29,077.00, depreciated at 5% per year for 2 years	\$26,169.30
Automobile	1,800.00
Clothing costing \$1,000.00, depreciated at 20% per year for 2 years	<u>600.00</u>
Total	<u>\$28,569.30</u>

Therefore, claimant's one-half interest therein had a value of \$14,284.65.

Land in Guanabacao

Claimant asserts the loss of 1,004.1 square varas of land in Santa Maria del Mar, Guanabacao, Cuba. The record shows that the land was acquired upon dissolution on February 11, 1960 of a Cuban corporation owned entirely by claimant and his wife (Exhibit 17). On the basis of the foregoing and official receipts (Exhibits 18, 19 and 20), the Commission finds that claimant and his wife each owned a one-half interest in land at Guanabacao, Cuba, measuring 1,004.1 square varas in area, equivalent to 722 square meters.

Law 989, published in the Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, real property, bonds and other securities of persons who left Cuba. In the absence of evidence to the contrary, the Commission finds that the said lot at Guanabacao, Cuba was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant states that the dissolved Cuban corporation had purchased the lot in 1957 at a cost of \$8.00 per square vara, amounting to \$8,032.00. A report from abroad indicates that the lot was deemed to have a value of

\$4,000.00 for the purpose of distributing it to claimant upon dissolution of the corporation. It appears from counsel's letter of March 2, 1970 that a low valuation was fixed in order to reduce the cost of recording it in the names of claimant and his wife. In an affidavit from an individual who had owned land in the same area, it is stated that the value of such land was \$10.00 per vara (Exhibit 7). The Commission notes that the land was situated in a suburb of Havana, Cuba.

Upon consideration of the entire record, the Commission finds that claimant's valuation is fair and reasonable. Accordingly, the Commission finds that the lot had a value of \$10,000.00 on December 6, 1961, the date of loss. Therefore, claimant's one-half interest therein had a value of \$5,000.00.

Three Lots in Alamar-Costa Azul

Claimant asserts the loss of three lots in Alamar-Costa Azul, a suburb of Havana. He states that he acquired the lots in April 1958 from a certain Cuban corporation, and because of certain Cuban prohibitions against the ownership of more than one piece of undeveloped land by any individual he had title recorded in the names of a third party and his two daughters.

The record includes an affidavit, dated March 21, 1967, from the real estate broker who sold the lots to claimant, corroborating claimant's statements in all respects (Exhibit 21). The fact that title to one of the lots belonging to claimant had been recorded in the name of a third party is supported by an affidavit, dated April 4, 1967, from that third party (Exhibit 22). Claimant has also filed affidavits, dated October 13, 1967 and November 13, 1967, from his two daughters, nationals of the United States since birth, in whose names the other two lots were recorded, respectively. Further corroboration is found in the said affidavit of April 19, 1967 (Exhibit 7) from an individual who had personal knowledge of the facts.

On the basis of the entire record, the Commission finds that claimant and his wife became the beneficial non-record joint owners of the three lots with the bare title residing in the third party and claimant's two daughters.

(See Claim of Franklin Russell Fette, Claim No. CN-0336, involving a similar situation in connection with a claim against the Chinese Communist regime under Title V of the Act; and FCSC Dec. & Ann. 39, 389, 589 (1968).)

The Commission further finds, in the absence of evidence to the contrary, that the three lots were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

The said real estate broker who sold the lots to claimant states in his affidavit (Exhibit 21) that each lot measured about 700 square varas in area and cost claimant \$7.00 per vara. It further appears from the evidence of record that the value of land in the area in question had increased to \$10.00 per vara at the time of loss. The Commission therefore finds the aggregate value of the three lots on December 6, 1961, the date of loss, was \$21,000.00.

However, the record shows that claimant had purchased the lots pursuant to contracts that required a down payment of \$980.00 on each lot, and 59 monthly payments of \$66.44 with respect to each lot. Between April 1958, when claimant acquired the lots until October 1960, when he left Cuba, claimant made 30 such monthly payments on account of each of the lots. Thus, claimant's aggregate payments amounted to \$2,940.00 (down payments) and \$5,979.60 (monthly payments), totalling \$8,919.60.

The Commission therefore finds that on December 6, 1961, the date of loss, claimant owed \$5,780.40, representing the difference between the total purchase price of the three lots, \$14,700.00, and the total payments, \$8,919.60. Accordingly, the Commission finds that the value of the equity in the three lots of claimant and his wife was \$15,219.60, representing the difference between the gross value of the three lots, \$21,000.00, and the unpaid portion of the purchase price, \$5,780.40. Therefore, the value of claimant's one-half interest therein on the date of loss was \$7,609.80.

Insurance Policy

Claimant asserts a loss of \$7,785.00 representing the total premiums he paid on a life insurance policy issued in Cuba by a Canadian insurance company (Exhibit 23). Apparently claimant had made payments for 5 years at the

rate of \$1,557.00 per year. In support of this portion of the claim, claimant has submitted a copy of a letter, dated April 21, 1965, from the insurance carrier. That letter indicates that due to certain Cuban restrictions the carrier was unable to effect a payment to claimant outside of Cuba. The carrier states that "we are still in the position to make payment to you in Havana in Cuban Pesos."

The Commission has held that when a life insurance policy matures and the proceeds are payable in Cuba, the proceeds are subject to confiscation if owned by a national of the United States. (See Claim of Zena K. Feldman, et al., Claim No. CU-0091.)

In the instant claim, the policy had not matured, but premiums had been paid only for 5 years. The courts of the United States have had occasion to consider claims of Cubans based on life insurance policies issued by American insurance carriers in Cuba. The courts have held that if a policy is payable in Cuba in Cuban pesos and no tender of such payment in Cuba is made, the policy will be deemed breached. (Blanco v. Pan-Amer. Life Ins. Co., et al., 221 F. Supp. 219 (S.D. Fla. 1963).) The Commission understands that the circumstances are similar in Canada.

Inasmuch as the Canadian carrier in this case did make a tender of the cash surrender value to claimant in accordance with the terms of claimant's insurance policy, the Commission indicated to counsel that the record did not establish that claimant's life insurance policy or its proceeds were taken by the Government of Cuba, and suggested the submission of evidence in this respect. When no response was received, the Commission directed a "follow up" letter to counsel under date of July 24, 1970. To date, no such evidence has been filed and no reply has been received.

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) (1970),)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based upon the life insurance policy. Accordingly, this portion of the claim is denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Tejidos Nina, S.A.	October 24, 1960	\$148,587.51
House and Lot	August 15, 1961	60,222.00
Furniture and Personal Belongings	August 15, 1961	14,284.65
Land in Guanabacoa	December 6, 1961	5,000.00
Three Lots	December 6, 1961	<u>7,609.80</u>
	Total	<u>\$235,703.96</u>

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

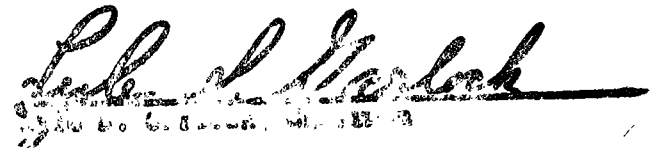
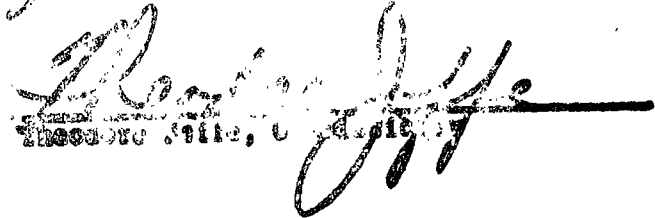
<u>FROM</u>	<u>ON</u>
October 24, 1960	\$148,587.51
August 15, 1961	74,506.65
December 6, 1961	<u>12,609.80</u>
Total	<u>\$235,703.96</u>

CERTIFICATION OF LOSS

The Commission certifies that STANLEY WAX 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-five Thousand Seven Hundred Three Dollars and Ninety-six Cents (\$235,703.96) 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

APR 7 1971


Robert H. Harlow

Theodore H. White

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

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

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, (1970).)