

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

FABIO E. DeMOYA  
and  
AMELIA DeMOYA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2842

Decision No. CU  
6010

Counsel for claimants:

Kurt Wellisch, Esq.

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 \$95,000.00, was presented by FABIO E. DeMOYA and AMELIA DeMOYA based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimants, husband and wife, have been nationals of the United States since July 18, 1952 and March 17, 1961, respectively.

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:

50% stock interest in Cia. Urbanizadora Davis, S.A. (Davis Development Corporation)	\$50,000.00
1/6 stock interest in Parcelacion Americana Isla de Pinos, S.A. (Parcelacion)	10,000.00
Residential lot 50, Brazo Fuerte Subdivision, Isle of Pines, Cuba	5,000.00
40 acres of land between Nueva Gerona and Santa Fe, Isle of Pines, Cuba	5,000.00
House and lot at Rio Las Casas, 2d Subdivision, Isle of Pines, Cuba	21,000.00
38 acres of land on McKinley Road, Isle of Pines, Cuba	3,000.00
Residential lot 28, Brazo Fuerte Subdivision, Isle of Pines, Cuba	<u>1,000.00</u>
Total	<u>\$95,000.00</u>

Davis Development Corporation

The evidence includes copies of stock certificates; a copy of the constitution of Davis Development Corporation indicating its organization under the laws of Cuba on September 21, 1956; an affidavit of February 26, 1970 from Pedro Manuel Diaz, the former Mayor of the Isle of Pines, Cuba, setting forth facts on the basis of personal knowledge; extracts from pertinent land records in Cuba; and affidavits of claimant.

Based upon the foregoing evidence, the Commission finds that claimants jointly owned a 50% stock interest in Davis Development Corporation, a Cuban corporation engaged in the real estate business. Pertinent land extracts show that this Cuban corporation owned 7 caballerias of land (a caballeria

equals 33.162 acres) on the Isle of Pines, Cuba. Therefore Davis Development Corporation owned 232.134 acres of land in Cuba. The land extracts indicate that the property was divided into 35 parcels, with varying numbers of lots in each parcel.

On December 6, 1961, Cuba published Law 989 in its Official Gazette which effected a confiscation of all assets, shares, real property, personal property and other property rights of persons who left Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the real property belonging to Davis Development Corporation was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Boger & Crawford, Claim No. CU-0037.)

Since Davis Development Corporation 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 shows that Davis Development Corporation owned no assets other than the said real property on the Isle of Pines, and that it had no liabilities on the date of loss, the real property not being encumbered by any mortgages or liens. It further appears from the record that the Cuban corporation had developed the land and had divided it into lots. The development consisted of surveying, engineering, the construction of roads and drainage systems, the surfacing of roads, and the erection of street signs and lights.

Claimants assert a loss of \$50,000.00 on account of their 50% stock interest in Davis Development Corporation. Their assertion is supported by the former Mayor of the Isle of Pines, who was experienced in appraising land in that area and who is familiar with the real property herein.

Upon consideration of the entire record, including the values of similar properties in the same area, the Commission finds that claimants' valuation is fair and reasonable. Accordingly, the Commission finds that the net worth of Davis Development Corporation on December 6, 1961, the date of loss, was \$100,000.00. Therefore, claimants' joint 50% interest therein had a value of \$50,000.00.

Parcelacion Americana Isla de Pinos, S.A.

On the basis of the entire record, the Commission finds that claimants jointly owned a 1/6 stock interest in Parcelacion, a Cuban corporation engaged in the real estate business on the Isle of Pines, Cuba. Pertinent land extracts show that this Cuban corporation owned 30 hectares of land (1 hectare equals 2.471 acres). Therefore Parcelacion owned 74.13 acres of land in Cuba. The Commission further finds that Parcelacion's real property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

The record shows that Parcelacion owned no assets other than the said real property on the Isle of Pines, and that it had no liabilities on the date of loss, the real property not being encumbered by any mortgages or liens. The record further shows that Parcelacion had developed the land and had divided it into lots. The land extract indicates that the property was divided into 14 parcels, with varying numbers of lots in each parcel. One of the parcels containing 5 hectares had been developed for use as a park.

The evidence also includes an advertisement showing that Parcelacion was offering its lots, each measuring 65 feet by 148 feet, for \$599.00 a lot. It appears, however, that Cuba took the property before any lots could be sold.

Claimants assert a loss of \$10,000.00 for their 1/6 stock interest in Parcelacion. Their valuation is supported by the former Mayor of the Isle of Pines who is also familiar with this real property.

Upon consideration of the entire record, including the values of similar properties in the same area, the Commission finds that claimants' valuation is fair and reasonable. Accordingly, the Commission finds that the net worth of Parcelacion on December 6, 1961, the date of loss, was \$60,000.00. Therefore, claimants' joint 1/6 interest therein had a value of \$10,000.00.

#### Real Property

On the basis of the said land extracts and the affidavit from the former Mayor of the Isle of Pines, the Commission finds that claimants jointly owned the following items of real property on the Isle of Pines, Cuba:

1. Lot 50, Brazo Fuerte Subdivision, having an area of 2,400 square meters.
2. Land between Nueva Gerona and Santa Fe, having an area of 40 acres.
3. House and lot at Rio Las Casas, 2d Subdivision.
4. Land on McKinley Road, having an area of 38 acres.
5. Lot 28, Brazo Fuerte Subdivision, having an area of 900 square meters.

The Commission further finds that the above items of unimproved real property (items 1, 2, 4 and 5) were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

The record shows that the valuations asserted by claimants with respect to the above four items of unimproved real property are based upon costs. It further appears from the record that items 1 and 5 were lots situated in a residential neighborhood. The 40 acres of land (item 2) had cost originally \$1,500.00. Thereafter claimants expended \$3,500.00 in surveying and dividing the land into lots, constructing streets, roads and a drainage system. It was contemplated that the lots would be offered for sale to the general public, but Cuba took the property before any sale was made.

The 38 acres on McKinley Road (item 4) were acquired in 1958. The total cost of the property, including a fence built around the three parcels which comprised the property, was \$3,000.00.

Claimants' valuations are also supported by an opinion from the former Mayor of the Isle of Pines.

Upon consideration of the entire record, the Commission finds that claimants' valuations are fair and reasonable. The Commission therefore finds that on December 6, 1961, the date of loss, the said four items of unimproved real property had the following values:

Residential lot 50 (item 1)	\$ 5,000.00
40 acres of land (item 2)	5,000.00
38 acres on McKinley Road (item 4)	3,000.00
Residential lot 28 (item 5)	<u>1,000.00</u>
	\$14,000.00

Therefore, claimants jointly sustained a loss in the amount of \$14,000.00.

The Commission further finds that the house and lot (item 3) were within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the house and lot were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Inasmuch as AMELIA DeMOYA acquired nationality of the United States on March 17, 1961, after the house and lot were taken, the provisions of Section 504(a) of the Act must be considered. That section 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.

The Commission finds that the portion of AMELIA DeMOYA's claim based on the house and lot was not owned by a national of the United States on

the date of loss and continuously thereafter until the date of filing with the Commission. Therefore, this portion of her claim is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].) It is concluded that FABIO E. DeMOYA sustained a loss within the meaning of Title V of the Act on account of his one-half interest in the house and lot.

The record shows that the lot on which the house was constructed measured 65,000 square meters, approximately 1.5 acres in area. It was located in the city of Nueva Gerona, Isle of Pines, and cost \$15,000.00 in 1956. Claimants improved the land by constructing a 2-bedroom, 2-bathroom house and a concrete block fence surrounding three sides of the property. The other side of the property bordered on a river. The improvements cost \$6,000.00.

On the basis of the entire record, the Commission finds that the house and lot had a value of \$21,000.00 on October 14, 1960, the date of loss. Therefore, FABIO E. DeMOYA's one-half interest therein had a value of \$10,500.00.

Recapitulation

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>FABIO E. DeMOYA</u>		
Davis Development Corporation	December 6, 1961	\$25,000.00
Parcelacion	December 6, 1961	5,000.00
Residential lot 50	December 6, 1961	2,500.00
40 acres of land	December 6, 1961	2,500.00
House and lot	October 14, 1960	10,500.00
38 acres on McKinley Road	December 6, 1961	1,500.00
Residential lot 28	December 6, 1961	<u>500.00</u>
	Total	<u>\$47,500.00</u>

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>AMELIA DeMOYA</u>		
Davis Development Corporation	December 6, 1961	\$25,000.00
Parcelacion	December 6, 1961	5,000.00
Residential lot 50	December 6, 1961	2,500.00
40 acres of land	December 6, 1961	2,500.00
38 acres on McKinley Road	December 6, 1961	1,500.00
Residential lot 28	December 6, 1961	<u>500.00</u>
	Total	<u>\$37,000.00</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>
<u>FABIO E. DeMOYA</u>	
October 14, 1960	\$10,500.00
December 6, 1961	<u>37,000.00</u>
Total	<u>\$47,500.00</u>
<u>AMELIA DeMOYA</u>	
December 6, 1961	<u>\$37,000.00</u>

CERTIFICATIONS OF LOSS

The Commission certifies that FABIO E. DeMOYA 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-seven Thousand Five Hundred Dollars (\$47,500.00) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

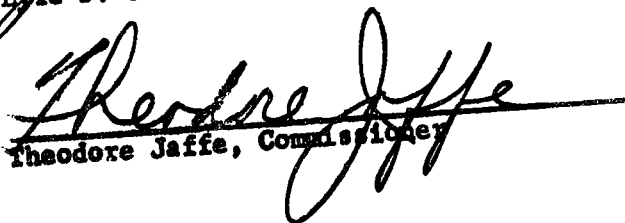


The Commission certifies that AMELIA DeMOYA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-seven Thousand Dollars (\$37,000.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

**JAN 6 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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 claimants establish 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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)