

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

IN THE MATTER OF THE CLAIM OF

HARRY C. PIEPER  
and  
ADELINE C. PIEPER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3667

Decision No. CU 4731

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 \$924,661.32, was presented by HARRY C. PIEPER and ADELINE C. PIEPER based upon the asserted loss of certain real and personal property in Cuba, and stock interests in Cuban corporations. 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.

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 have asserted the following losses:

Textile Mill	\$915,416.82
Personal Equipment	1,200.00
Securities	1,000.00
Yacht	4,780.00
Crypt	664.50
Land	<u>1,600.00</u>
Total	<u>\$924,661.32</u>

The record establishes that claimants, husband and wife, each owned a one-half interest in the properties claimed pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

#### Textile Mill

The Commission finds on the basis of the evidence of record that claimants jointly owned 100% of the outstanding capital stock of Tejidos Soltex, S.A., a Cuban corporation engaged in the textile manufacturing industry, hereafter referred to as Tejidos.

The record shows that on October 14, 1960 the Government of Cuba nationalized Tejidos by Resolution 60-303, pursuant to Law 890.

Since Tejidos 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 based upon 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 evidence includes copies of balance sheets for Tejidos for the years ending December 31, 1955 through December 31, 1959, and as of July 16, 1960, September 10, 1960 and October 31, 1960; and an affidavit from a Cuban accountant, dated January 22, 1970, in which he states that he was in control of all the books and records of Tejidos, and certifies to the accuracy of the balance sheet as of October 31, 1960. The record also includes photographs of some of the textile machines and equipment at the mill.

Claimants assert that the value of Tejidos on the date of loss was \$915,416.82, representing \$715,416.82, the net worth shown in the balance sheet as of October 31, 1960, and good will in the amount of \$200,000.00 not appearing in the balance sheet. They state that a firm of accountants had advised them that the profits earned by Tejidos during the last year of operations warranted the conclusion that the good will of Tejidos had a value of \$200,000.00.

With respect to claimants' assertion concerning good will, the Commission suggested the submission of any report or correspondence from the accountants in question to support that valuation. Claimants' response of February 8, 1970 was that a partner of the firm of accountants had given the advice verbally.

An examination of the entire record fails to support claimants' assertion concerning good will. The record shows that Tejidos suffered a net loss of \$336.91 for the year ending December 31, 1955; that it earned \$24,834.76 in 1956; \$30,802.14 in 1957; \$33,678.11 in 1958; and \$235,023.56 for the ten months ending October 31, 1960. While the net earnings for 1959 are not of record, it appears from an analysis of the balance sheet and claimants' statements that 1959 was similar to the previous year. Claimants state that conditions were unusual in 1960; prices rose and there was a great demand for goods, all of which resulted in a substantial increase in profits.

It appears that Tejidos was organized in Cuba on March 19, 1947. Judging from the five-year period of operations prior to 1960 and assuming normal net earnings in 1959, the average annual net earnings of Tejidos would approximate \$26,000.00. Clearly, 1960 was a most unusual and abnormal year for Tejidos. Consequently, the Commission considers it inappropriate to employ 1960 as a norm.

Upon consideration of the entire record, including the history of Tejidos under normal conditions which discloses that a large amount of assets was required to produce modest earnings, the Commission finds no valid basis for allowing any amount on account of good will. Accordingly, the portion of the claim for good will in the amount of \$200,000.00 is denied.

The Commission finds that the valuation most appropriate in this case and equitable to the claimants is that shown in the balance sheet for Tejidos as of December 31, 1959, representing the financial condition of Tejidos under normal conditions.

The balance sheet for Tejidos as of December 31, 1959 shows the following, the Cuban peso being on a par with the United States dollar:

ASSETS

Current Assets:

Cash in banks and on hand		\$ 14,065.96	
Accounts and notes receivable from customers (\$200,435.65), less notes discounted (\$111,499.35)	\$ 88,986.30		
Less: Estimated for losses	<u>10,938.46</u>	78,047.84	
Inventories - at cost:			
Finished goods	37,637.75		
Goods in process	60,547.44		
Raw materials	146,838.20		
Supplies	<u>8,460.31</u>	253,483.70	
Raw materials and supplies in transit		52,512.28	
Claims and sundry accounts receivable		8,292.87	
Prepaid taxes, insurance premium and interest		<u>13,611.15</u>	\$420,013.80

Fixed Assets - at cost:

Land		13,882.78	
Buildings	42,441.96		
Machinery and equipment	320,383.96		
Furniture and fixtures	17,789.50		
Automobiles	<u>8,226.90</u>		
	<u>388,842.32</u>		
Less: Accumulated depreciation	<u>156,133.60</u>	232,708.72	
Amplification of building - work under construction		2,408.02	
Machinery in process of installation		25,497.00	
Tools		<u>538.56</u>	275,035.08

Other Assets:

Shares of Ferrocarriles Occidentales de Cuba, S.A. - at cost		900.00	
Deposits for taxes pending resolution by tax authorities		604.37	
Service guarantee deposits		<u>375.00</u>	<u>1,879.37</u>
<b>TOTAL ASSETS</b>			<b>\$696,928.25</b>

LIABILITIES

Current Liabilities:

Bank loans - 6% interest	\$ 20,000.00		
Trade accounts payable	100,026.77		
Notes payable for machinery purchases	18,209.83		
Estimated profits taxes	33,500.00		
Other taxes and pension fund payable	9,126.58		
Salaries and commissions payable and accrued vacations	966.13		
Customer's credit balance	<u>2,845.80</u>	184,675.11	

Capital and Undistributed Profits:

Issued and outstanding - 3,216 shares	321,600.00		
Undistributed profits	<u>190,653.14</u>	<u>512,253.14</u>	
<b>TOTAL LIABILITIES</b>			<b>\$696,928.25</b>

The Commission finds that the net worth of Tejidos or the excess of its assets over its liabilities on October 14, 1960, the date of loss, was \$512,253.14. Accordingly each claimant sustained a loss in the amount of \$256,126.57.

Loss of Income

It appears that claimants wish to assert a claim for loss of income and/or salaries for the period of time subsequent to nationalization by the Government of Cuba. Apparently this portion of the claim relates to Tejidos.

The Commission has held consistently under Title V of the Act that all income derived after nationalization belonged to the Government of Cuba. There is no evidence to establish that any income or salaries belonging to claimants were taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

Personal Equipment

The Commission finds on the basis of the evidence of record that claimants jointly owned certain tools and other equipment which they maintained on the premises of Tejidos. The Commission further finds that the tools and equipment were taken by the Government of Cuba on October 14, 1960 when Tejidos was nationalized. Based upon a certified list of said property and other evidence of record, the Commission finds that the value of the tools and equipment on October 14, 1960 was \$1,200.00. Accordingly, each claimant sustained a loss in the amount of \$600.00.

Securities

On the basis of a copy of a stock certificate and other evidence of record, the Commission finds that claimants jointly owned since 1944 one share of stock in Havana Biltmore Yacht and Country Club, a Cuban corporation. As American nationals, claimants are entitled to file a claim based on their ownership interest. (See Claim of Parke, Davis & Company, supra.)

The Commission has found that the Havana Biltmore Yacht and Country Club was intervened by the Government of Cuba on March 19, 1960, and that a share of stock in that corporation had a value of \$3,500.00 on the date of loss. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.)

Claimants have asserted a loss of \$1,000.00 for said stock on the basis of its par value. The Commission finds that claimants' share of stock in Havana Biltmore Yacht and Country Club had a value of \$3,500.00 on March 19, 1960. Therefore, each claimant sustained a loss in the amount of \$1,750.00.

#### Yacht

Based upon the evidence of record, the Commission finds that claimants jointly owned since 1957 a yacht and certain appurtenant equipment, which claimants maintained at the premises of the Havana Biltmore Yacht and Country Club. The Commission finds that said yacht and equipment were taken by the Government of Cuba on March 19, 1960 when the Havana Biltmore Yacht and Country Club was intervened.

Claimants base their asserted valuation of the yacht and equipment on their purchase price in 1957. They have also submitted a statement by a boat company that similar property would cost \$6,280.00 as of September 13, 1967, the date of said statement. Taking into consideration the fact that the yacht and equipment depreciated in value from the date of acquisition to March 19, 1960, the date of loss, the Commission finds that said property had a value of \$4,206.40 on the date of loss. Accordingly, each claimant sustained a loss in the amount of \$2,103.20.

#### Crypt

The Commission finds on the basis of the evidence of record that claimants jointly owned a burial lot and family crypt located in Cristobal Colon Cemetery, Vedado, Havana, Cuba.

On December 6, 1961, the Cuban Government published Law 989, which effected a taking of property rights of persons who had left the country. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and that the burial lot and crypt were 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].)

The evidence establishes that the said property was acquired at a cost of \$664.50, the amount claimed. The Commission, therefore, finds that the value of the property on December 6, 1961, the date of loss, was \$664.50. Accordingly, each claimant sustained a loss in the amount of \$332.25.

Land

The record shows that claimants entered into a contract to purchase two lots in East Havana, Cuba. Claimants paid the sum of \$1,600.00 on account of the purchase price of \$18,050.70, and further monthly payments of certain agreed amounts were to be made until the balance of the purchase price was paid. It appears from the record that the initial payment of \$1,600.00 was made on February 20, 1959, and that the land was taken by the Government of Cuba a few days later.

The Commission finds that claimants jointly owned an interest in the land (see Claim of Wallace Tabor and Catherine Tabor, supra). The Commission further finds in the absence of evidence to the contrary, that the land was taken by the Government of Cuba on February 25, 1959. The Commission further finds that the value of claimants' interest in the land on February 25, 1959 was \$1,600.00, and concludes that each claimant sustained a loss in the amount of \$800.00.

Recapitulation

The losses sustained by each claimant are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Textile Mill	October 14, 1960	\$256,126.57
Personal Equipment	October 14, 1960	600.00
Securities	March 19, 1960	1,750.00
Yacht and Equipment	March 19, 1960	2,103.20
Crypt	December 6, 1961	332.25
Land	February 25, 1959	800.00
	Total	<u>\$261,712.02</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 as follows for each claimant:

<u>FROM</u>	<u>ON</u>
February 25, 1959	\$ 800.00
March 19, 1960	3,853.20
October 14, 1960	256,726.57
December 6, 1961	<u>332.25</u>
Total	<u>\$261,712.02</u>

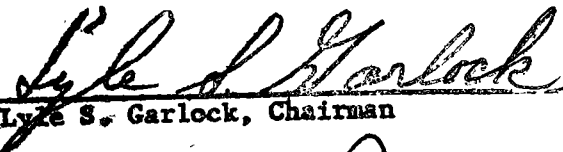
CERTIFICATION OF LOSS

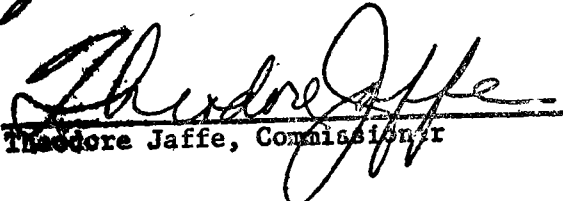
The Commission certifies that HARRY C. PIEPER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Sixty-One Thousand Seven Hundred Twelve Dollars and Two Cents (\$261,712.02) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and


The Commission certifies that ADELINE C. PIEPER 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 Sixty-One Thousand Seven Hundred Twelve Dollars and Two Cents (\$261,712.02) 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.

15 APR 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

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

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531:5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)