

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

IN THE MATTER OF THE CLAIM OF

ALFRED JAMES OSTHEIMER III

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1481

Decision No. CU-279 ✓

Counsel for claimant:

White and Williams
by Richard C. Bull, Esquire

Petition to reopen; Proposed Decision dated and entered September 20, 1967.
Final Decision entered March 5, 1968.

AMENDED FINAL DECISION

The Commission issued a Proposed Decision in this claim on September 20, 1967, denying the same for lack of proof. Claimant, through counsel, objected to the Proposed Decision and requested an extension of time for the submission of evidence. His request was granted, but no evidence was submitted and on March 5, 1968 the Proposed Decision was entered as the Final Decision in this claim. Claimant thereafter submitted additional evidence and petitioned for the reopening of the claim. Upon due consideration, the Commission grants the petition for reopening and now finds as follows:

Claimant states that he was the owner of a one-sixth interest in a firm doing business under the name of "Broch-Carames-Chaffee y Compania, Sociedad Limitada", a limited partnership organized under the laws of Cuba. The firm was engaged in the management of two cattle ranches, (under a 99-year lease) located in the area of Guane, Province of Pinar del Rio. The ranches were known as "Los Ocujes" and "Los Reyes Magos" Estates. On December 10, 1958, the assets of the limited partnership were sold to a partnership, consisting of Fernando G. Mendoza, Salvador Acosta, Guillermo Reus and Faustino Leal, all citizens of Cuba. They paid \$25,000 cash for the assets of the limited partnership other than the cattle, and agreed to pay for the cattle an amount of

approximately \$45,000.00 subject to a physical count of the cattle on the spot. The amount of \$25,000.00 was deposited in the bank account of the limited partnership with the Banco Nunez of Havana. The purchase price for the cattle remained unpaid, because early in 1959 the Cuban Agrarian Reform authorities seized the ranches together with the cattle and prevented any further business transactions between the purchasers and the former owners of the leasehold. None of the money deposited with Banco Nunez, representing claimant's partnership interest, was transferred to the claimant in the United States.

Since Broch-Carames-Chaffee y Compania, Sociedad Limitada, was organized under the laws of Cuba, it does not qualify as a "national of the United States" within the meaning of Section 502(1)(B) of the Act, which defines a national of the United States 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. In this type of situation it is concluded that an American owner of an interest in a limited partnership, such as claimant herein, 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. 37).

On the basis of the evidence of record, the Commission finds that the money deposited with the bank and the accounts receivable were the only assets of the limited partnership, and that said partnership had no known liabilities. The Commission, therefore, concludes that claimant had a one-sixth interest in the bank deposit and in the accounts receivable of the limited partnership.

With respect to the deposit of \$25,000.00 the Commission has found that Cuban Law 568 published in the Official Gazette of September 29, 1959, prohibited the transfer of funds to the United States and holds that this law and its implementation with respect to the rights of the claimant herein, was not a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Cuban Government in claimant's contractual rights, which resulted in the ultimate 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-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46).

Accordingly, the Commission finds that claimant suffered a loss of \$4,166.67, equivalent to a one-sixth interest in \$25,000.00 as of September 29, 1959, resulting from actions of the Cuban Government within the meaning of Section 503(a) of the Act.

With respect to the unpaid balance of approximately \$45,000.00, of the purchase price for the cattle, the Commission finds that the sale by means of a public instrument signed on December 10, 1958, created an obligation of the partnership, consisting of the aforementioned four Cuban partners, to pay the balance to Broch-Carames-Chafee y Compania, Sociedad Limitada, as soon as the head of cattle was counted. Pursuant to the Cuban Agrarian Reform Law of May 17, 1959, and the regulations published in the Official Gazette of October 7, 1959, rural properties and farms such as those subject of this claim were expropriated (see Claim of the Estate of Grenville M. Dodge, Deceased, Claim No. CU-1290).

The Commission, therefore, holds that these assets of the partnership that purchased the farms, were taken by the Government of Cuba on October 7, 1959 and that thus the Broch partnership suffered a loss of the debt claim in the amount of \$45,000.00. The Commission concludes that claimant therefore suffered an additional loss of \$7,500.00 as of October 7, 1959.

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 dates of the 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>
September 29, 1959	\$ 4,166.67
October 7, 1959	<u>7,500.00</u>
	\$11,666.67

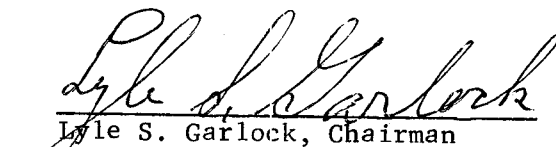
Accordingly, the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

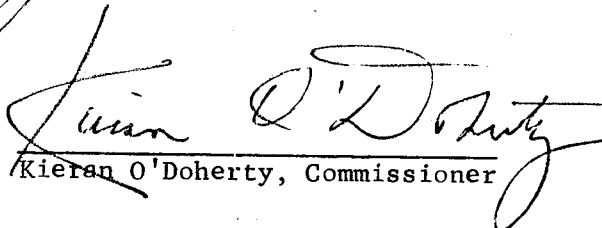
CERTIFICATION OF LOSS

The Commission certifies that ALFRED JAMES OSTHEIMER III 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 Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$11,666.67) with interest thereon at the rate of 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 30 1972
FBI


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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Counsel for claimant:

White and Williams
By: Richard C. Bull, Esq.

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 amount of \$11,666.67, was presented by ALFRED JAMES OSTHEIMER, III and is based upon the asserted loss of a one-sixth partnership interest in a cattle ranch. Claimant has been a national of the United States since his birth in Philadelphia, Pennsylvania on April 25, 1908.

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 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.

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).)

Claimant contends as follows:

Claimant was a one-sixth partner in the partnership Broch-Carames-Chaffee y Cia Sociedad Limitada, in which he had, prior to January 1, 1960, invested a total of \$37,336.60. The sole asset of the partnership was a leasehold interest in a Cuban cattle ranch consisting of Los Ocujes and Los Reyes Magos Estates located in the municipality of Guane in the Province of Pinar del Rio, Cuba, and the cattle and tangible personal property thereon, which it rented from Compania Agricola Los Ocujes, S.A. On December 10, 1958, the assets of the partnership were sold to a syndicate consisting of Guillermo Reus y Bosch, Salvador Acosta y Casares, Fernando Gonzalez de Mendoza and Dr. Faustino Leal y Diaz Arguelles, who paid \$25,000 cash for the assets other than the cattle, and who agreed to pay for the cattle following a physical count. It is claimant's best information that such a physical count would be resulted in the payment of at least an additional \$45,000 for the cattle. The \$25,000 was deposited in the partnership bank account at Oficina de Mercaderes #260 Havana of the Banco Nunez. On January 1, 1959, the date of the revolution by which Castro seized power, the bank account was frozen and the cattle commandeered. Subsequently the bank account was apparently confiscated, since the bank has reported the balance in the account as zero, and it has been impossible to locate any of the cattle or obtain any redress with respect thereto. All of the formal documents

relating to the sale were in Cuba at the time of the revolution, and claimant has never been able to obtain copies thereof, although the partnership's Cuban attorneys had advised him in advance of the nature of the transaction and also advised him as to the deposit and its subsequent confiscation and the confiscation of the cattle.

By Commission letter of June 6, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. By letter of June 23, 1967, claimant through counsel, requested additional time for the submission of evidence which was granted by the Commission in a letter dated July 5, 1967. Subsequently claimant submitted a copy of a power of attorney dated January 13, 1956 and a copy of an anonymous letter purportedly from Cuba.

On July 21, 1967, counsel was invited to submit any evidence available to him by August 5, 1967, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was intervened, nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 3-5-68

Theodore Jaffe

Theodore Jaffe, Commission

Lavern R. Dilweg

Lavern R. Dilweg, Commissioner

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).)