

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

IN THE MATTER OF THE CLAIM OF

WARREN AND ARTHUR SMADBECK, INC.  
and ST. AUGUSTINE SOUTH, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2465

Decision No. CU -967

Counsel for claimants:

Weiss Bronston Rosenthal & Heller  
By George D. Cohen, Esq.

AMENDED PROPOSED DECISION

*F.D. Follow*

Under date of January 17, 1968, the Commission issued a Proposed Decision denying this claim for lack of proof. The claim had been filed originally by WARREN AND ARTHUR SMADBECK, INC. Subsequently, the original claimant submitted evidence in support of this claim, which establishes, inter alia, that its wholly-owned Florida subsidiary, ST. AUGUSTINE SOUTH, INC., owned an interest in the property in question.

Upon consideration of the new evidence in light of the entire record, it is

ORDERED that ST. AUGUSTINE SOUTH, INC., hereafter referred to as ST. AUGUSTINE, be added as party claimant; and it is further

ORDERED that the Proposed Decision be and it is herein amended.

The record shows that WARREN AND ARTHUR SMADBECK, INC., hereafter referred to as SMADBECK, was organized under the laws of New York, and that at all pertinent times more than 50% of SMADBECK's outstanding capital stock was owned by nationals of the United States. An authorized officer of SMADBECK has certified under date of July 10, 1969 that 100% of SMADBECK's outstanding capital stock was owned by nationals of the United States. The record further shows that ST. AUGUSTINE was organized under the laws of Florida, and that at all pertinent times 100% of its outstanding capital

stock was owned by SMADBECK. The Commission holds that SMADBECK and ST. AUGUSTINE are nationals of the United States within the meaning of Section 502(1)(B) of the Act, which 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.

Presidente Corporation

SMADBECK asserts that it owned a 100% stock interest in Presidente Corporation, a Cuban corporation hereafter referred to as Presidente. In support thereof, SMADBECK has submitted copies of stock certificates and other evidence establishing that it owned 220 shares of preferred stock and 2,000 shares of common stock in Presidente. It is asserted that SMADBECK also owned 60 more shares of preferred stock in Presidente, but that the certificates for these additional 60 shares are not available. According to SMADBECK, Presidente's total outstanding capital stock consisted of 280 shares of preferred stock and 2,000 shares of common stock.

The record includes copies of a comparative balance sheet for Presidente as of March 31, 1957 and March 31, 1958 and supporting schedules (Exhibit MMM). SMADBECK states that no other financial statements or other evidence concerning the value of Presidente is available, all such records having been maintained in Cuba. With respect to Presidente's outstanding capital stock, the comparative balance sheet shows only 2,000 shares of common stock. There is nothing in the record to indicate why the preferred stock does not appear in that balance sheet.

The Commission finds it unnecessary to determine whether SMADBECK owned a 100% stock interest in Presidente since other factors are dispositive of this portion of the claim.

On October 24, 1960, Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the Presidente Corporation. Since Presidente was organized under the laws of Cuba, it does not qualify as a corporate "national 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.

As indicated above, the only available evidence concerning the value of Presidente is its comparative balance sheet as of March 31, 1957 and March 31, 1958. That balance sheet shows that the net worth of Presidente, or the excess of its assets over its liabilities, as of March 31, 1957 was \$36,015.25 and as of March 31, 1958 was \$14,369.33, the Cuban peso being on a par with the United States dollar. It further appears from the supporting schedules accompanying the balance sheet that Presidente had a deficit as of April 1, 1956 in the amount of \$62,082.41; that it earned a profit of \$10,097.66 for the year ending March 31, 1957, leaving a net deficit of \$51,984.75; and that it had a loss for the year ending March 31, 1958 in

the amount of \$21,645.92, resulting in a deficit of \$73,630.67 as of March 31, 1958. Inasmuch as its capital is shown as \$88,000.00 in the comparative balance sheet, the net worth of Presidente as of March 31, 1958 was \$14,369.33.

SMADBECK asserts a claim in the amount of \$14,000.00 for its stock interest in Presidente. It has submitted a copy of an extract from its records (Exhibit SSS) which indicates that SMADBECK's investment in preferred stock of Presidente was \$11,000.00 as of December 31, 1959. SMADBECK has stated that its investment in Presidente was \$14,000.00, including \$3,000.00 "allotted to the common stock" of Presidente held by stockholders of SMADBECK and later assigned to SMADBECK.

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).)

The Commission finds that while the amount of SMADBECK's investment in Presidente has some probative value, it is insufficient to establish the value of Presidente on October 24, 1960, the date of loss. The Commission finds that the comparative balance sheet for Presidente, indicating its value as of March 31, 1958, over 2-1/2 years prior to the date of loss, is likewise an insufficient basis for determining the value of a stock interest in Presidente on the date of loss.

Accordingly, it is concluded that SMADBECK has failed to meet the burden of proof with respect to the portion of its claim for a stock interest in Presidente. This portion of its claim is, therefore, denied.

Gulfview Hotel, S.A.

SMADBECK asserts that it owned a 100% stock interest in Gulfview Hotel, S.A., a Cuban corporation also known as Hotel Vista del Golfo, S.A., hereafter referred to as Gulfview. It has submitted copies of stock certificates and other evidence establishing ownership of 490 shares out of a total of 670 shares of outstanding capital stock of Gulfview. SMADBECK states that it is unable to locate the other 180 shares of stock.

Here again, the Commission finds it unnecessary to determine the extent of SMADBECK's stock interest in Gulfview.

On the basis of the evidence of record, which indicates that Gulfview was affiliated with Presidente, the Commission finds that Gulfview was nationalized by the Government of Cuba on October 24, 1960.

SMADBECK claims \$19,333.34 as the value of its stock interest in Gulfview on the basis of its investment in acquiring assignments of the shares of stock on December 31, 1959. The only evidence which SMADBECK has submitted in support of its asserted value of said stock interest is a copy of a balance sheet for Gulfview as of December 31, 1957 (Exhibit 000). That balance sheet shows that the net worth of Gulfview as of December 31, 1957 was \$33,747.91. It further appears that as of January 1, 1957, Gulfview had a deficit of \$1,829.10 and earned a profit of \$2,077.01 for 1957, resulting in a surplus of \$247.91 as of December 31, 1957.

For the reasons stated with respect to the stock interest in Presidente, mutatis mutandis, the portion of SMADBECK's claim for a stock interest in Gulfview is denied.

#### North Shore Real Estate Corporation

SMADBECK asserts that it owned a 100% stock interest in North Shore Real Estate Corporation, a Cuban corporation hereafter referred to as North Shore. It has submitted copies of stock certificates and other evidence establishing ownership of 30 shares out of an asserted total of 40 shares of outstanding capital stock of North Shore. SMADBECK states that it is unable to locate the stock certificates for the other 10 shares.

For the reasons stated with respect to Presidente and Gulfview, no determination is being made as to the extent of SMADBECK's stock interest in North Shore.

The Commission finds that North Shore, which was also associated with Presidente, was nationalized by the Government of Cuba on October 24, 1960.

SMADBECK claims \$42,400.00 as the value of its stock interest in North Shore based upon its investment in acquiring assignments of the shares of stock on December 31, 1959.

Inasmuch as the record contained neither a balance sheet for North Shore nor any other evidence upon which to determine the value of a stock interest in North Shore on the date of loss, the Commission suggested the submission of evidence in this respect. SMADBECK's response was that no evidence was available to establish the nature or value of North Shore's assets and liabilities. It submitted a copy of an extract from its books and records (Exhibit SSS), showing that its investment in North Shore as of December 31, 1959 was \$42,400.00. SMADBECK further stated that all records were left in Cuba, and that individuals with personal knowledge of the facts are now deceased or unavailable.

For the reasons stated with respect to Presidente and Gulfview, the portion of SMADBECK's claim for a stock interest in North Shore is denied.

Debt Due From Presidente

The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

SMADBECK asserts that it was owed a debt from Presidente in the amount of \$13,760.00. The record includes a cancelled check in the amount of \$3,000.00, drawn December 9, 1959, by ST. AUGUSTINE in favor of Presidente, and a bank statement establishing that ST. AUGUSTINE's bank account with a Cuban bank had been reduced by \$3,000.00 (Exhibit SS).

It is stated by SMADBECK that ST. AUGUSTINE was its agent for this purpose; that the balance of the amount claimed, \$10,760.00, was represented by funds in Cuba belonging to ST. AUGUSTINE; and that documents corroborating these statements were left in Cuba. Subsequently, SMADBECK submitted a copy

of an extract from its books and records (Exhibit SSS). That extract shows that as of December 31, 1959 Presidente was indebted to SMADBECK in the amount of \$8,000.00.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that on October 24, 1960, the date of loss, Presidente was indebted to ST. AUGUSTINE in the amount of \$3,000.00, and to SMADBECK in the amount of \$8,000.00. The Commission concludes that claimants sustained losses in those amounts within the meaning of Title V of the Act.

#### Debt Due From Gulfview

SMADBECK claims that Gulfview owed it \$30,300.00. It states that the debt had been \$13,000.00; had been reduced to \$12,300.00, and that a further loan of \$18,000.00 to Gulfview had been made by its agent, ST. AUGUSTINE, on February 18, 1960. The record includes a cancelled check for \$18,000.00, dated February 18, 1960, drawn by ST. AUGUSTINE in favor of Gulfview, and a bank statement establishing that ST. AUGUSTINE's bank account with a Cuban bank had been reduced by \$18,000.00 (Exhibit TT). A copy of an extract from SMADBECK's books and records (Exhibit SSS) shows that as of December 31, 1959 Gulfview owed SMADBECK \$12,300.00.

Based upon the entire record and in the absence of evidence to the contrary, the Commission finds that on October 24, 1960, the date of loss, Gulfview was indebted to ST. AUGUSTINE in the amount of \$18,000.00, and to SMADBECK in the amount of \$12,300.00. It is concluded that claimants sustained losses in those amounts.

#### Debt Due From North Shore

SMADBECK claims that North Shore owed it \$15,500.00. The record includes a copy of a note in Spanish and a translation thereof (Exhibits VV and WW), showing a debt due SMADBECK by North Shore in the amount of \$15,500.00; several letters corroborating this debt (Exhibits YY, ZZ, AAA and BBB); and a copy of an extract from SMADBECK's books and records (Exhibit SSS) as further proof of the debt due from North Shore.

On the basis of the foregoing evidence, the Commission finds that on October 24, 1960, the date of loss, North Shore was indebted to SMADBECK in the amount of \$15,500.00. It is concluded that SMADBECK sustained a loss in that amount.

#### Real Property

SMADBECK claims the loss of real property consisting of an apartment house in Havana, Cuba, which it values at \$31,000.00 and certain other improved and unimproved property in Varadero Beach and Havana, Cuba, which it values at \$70,600.00.

The record includes an undated original memorandum prepared in Havana (Exhibit JJJ) and a letter, dated January 11, 1968 to a stockholder of SMADBECK indicating that an officer of SMADBECK had loaned \$31,000.00 to North Shore, apparently in April 1960, to enable North Shore to purchase certain real property in Cuba. It further appears that the \$31,000.00, which was used to make that loan, belonged to ST. AUGUSTINE.

On the basis of the entire record, the Commission finds that on October 24, 1960, the date of loss, North Shore was indebted to ST. AUGUSTINE in the amount of \$31,000.00. It is concluded that ST. AUGUSTINE sustained a loss in that amount.

With respect to the other claimed real property, SMADBECK states that it has been advised that it owned the following items of real property which cost \$70,600.00:

1. A swimming pool lot and house adjacent to the Presidente Hotel in Havana;
2. An apartment house on Presidente Avenue diagonally across the street from the Presidente Hotel;
3. A lot adjacent to the Havana Yacht Club;
4. A square block in Varadero Beach; and
5. A parcel of land with 1,200 feet of frontage on the road which separates it from the Hotel International in Varadero Beach.



However, there is no evidence in the record to corroborate ownership of the above real properties. SMADBECK states that all records concerning said properties were maintained in Cuba and are unavailable. Counsel's statement of January 22, 1970 indicates that the claimed real properties were held by Cuban subsidiaries, and that a former Cuban Ambassador to the United States, presently in Cuba, could attest to the acquisition thereof if he were available. It is noted that the extract from SMADBECK's books and records (Exhibit SSS), which shows its investments in Cuba as of December 31, 1959, fails to refer to said properties either as belonging to SMADBECK or in the form of a debt due from any Cuban corporation.

Upon consideration of the entire record, the Commission finds that SMADBECK has failed to sustain the burden of proof with respect to the portion of the claim for the asserted loss of \$70,600.00 based upon the above-described real properties. Accordingly, this portion of SMADBECK's claim is denied.

#### Cash

SMADBECK asserts the loss of cash in the aggregate amended amount of \$46,007.26, representing a bank account with the Trust Company of Cuba in the amount of \$22,650.61, and other funds in Cuba in the amount of \$23,356.65.

The record includes a bank book and a translation thereof (Exhibits CCC and DDD), establishing that ST. AUGUSTINE had a savings account with the Trust Company of Cuba with a balance in its favor of \$15,148.32 as of December 9, 1959. It appears that the original deposit was \$15,000.00, and that interest in the aggregate amount of \$148.32 was added. SMADBECK has added interest at the rate of 5% compounded annually for the period December 1959 through March 31, 1968 to arrive at its claimed amount, \$22,650.61. In counsel's statement of July 17, 1959, it is admitted that the claimed interest has been projected, and that there is no available evidence to establish that such interest had been added to the account.

On the basis of the evidence of record, the Commission finds that all bank accounts belonging to either claimant, as found hereafter, were taken by the Government of Cuba on October 24, 1960.

The Commission finds that the savings account at the Trust Company of Cuba belonged to ST. AUGUSTINE. The Commission further finds that ST. AUGUSTINE's savings account earned no interest after October 24, 1960, the date of loss, since the account then belonged to Cuba. Moreover, on the basis of the evidence presented, the Commission finds no basis for concluding that the value of the savings account was increased by interest between December 9, 1959, the date of the last bank book entry, and the date of loss. A translation of the bank rules applicable to this account (Exhibit DDD) indicates that the bank reserved the right to pay or not pay any interest on this account. Accordingly, the Commission finds that the value of ST. AUGUSTINE's savings account on October 24, 1960 was \$15,148.32.

With respect to the claim for other funds in the amount of \$23,356.65, SMADBECK states that one of its agents in Cuba had collected \$13,009.32 in monies belonging to ST. AUGUSTINE and had not deposited the funds in any bank. In addition, claim is made for two checking accounts at the Trust Company of Cuba in amounts of \$5,530.89 and \$4,816.44, respectively.

The evidence establishes and the Commission finds that ST. AUGUSTINE owned a bank account with the Trust Company of Cuba, having a value of \$5,530.89 as of August 31, 1960 (Exhibit EEE), and that SMADBECK owned a bank account with that bank, having a value of \$4,816.44 (Exhibit FFF). The Commission finds that claimants sustained losses in those amounts on October 24, 1960.

The record shows (Exhibit QQQ) that ST. AUGUSTINE's agent did collect monies in the amount of \$13,009.32, which ST. AUGUSTINE recorded on its records as an account receivable. It appears that the agent was unable to transfer the funds to ST. AUGUSTINE in the United States due to restrictions imposed by the Government of Cuba.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of ST. AUGUSTINE, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of this claimant, which resulted in the 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 ST. AUGUSTINE sustained a loss in the amount of \$13,009.32 as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the loss occurred on November 30, 1961, 30 days after the last collections were made by ST. AUGUSTINE's agent as shown by correspondence from the agent (Exhibit QQQ).

Recapitulation

Claimants' losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>SMADBECK</u>		
Debt due from Presidente	October 24, 1960	\$ 8,000.00
Debt due from Gulfview	October 24, 1960	12,300.00
Debt due from North Shore	October 24, 1960	15,500.00
Checking account	October 24, 1960	<u>4,816.44</u>
	Total	<u>\$ 40,616.44</u>

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>ST. AUGUSTINE</u>		
Debt due from Presidente	October 24, 1960	\$ 3,000.00
Debt due from Gulfview	October 24, 1960	18,000.00
Debt due from North Shore	October 24, 1960	31,000.00
Savings account	October 24, 1960	15,148.32
Checking account	October 24, 1960	5,530.89
Debt due from Cuban agent	November 30, 1961	<u>13,009.32</u>
	Total	<u>\$ 85,688.53</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 this case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
<u>SMADBECK</u>	
October 24, 1960	\$ 40,616.44
	<u>                    </u>
<u>ST. AUGUSTINE</u>	
October 24, 1960	\$ 72,679.21
November 30, 1961	<u>13,009.32</u>
	<u>                    </u>
Total	<u>\$ 85,688.53</u>

CERTIFICATION OF LOSS

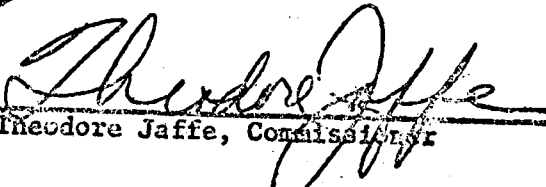
The Commission certifies that WARREN AND ARTHUR SMADBECK, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty Thousand Six Hundred Sixteen Dollars and Forty-four Cents (\$40,616.44) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

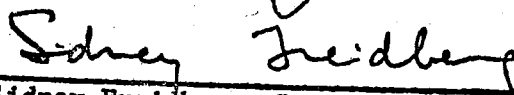
The Commission certifies that ST. AUGUSTINE SOUTH, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-five Thousand Six Hundred Eighty-eight Dollars and Fifty-three Cents (\$85,688.53) with interest at 6% per annum on \$72,679.21 from October 24, 1960, and on \$13,009.32 from November 30, 1961, to the date of settlement.

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

APR 22 1970

  
Lyde 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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

WARREN AND ARTHUR SMADBECK, INC.  
and ST. AUGUSTINE SOUTH, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2465

Decision No. CU -967

Counsel for claimants:

Weiss Bronston Rosenthal  
Heller & Schwartzman  
By George D. Cohen, Esq.

Appeal and objections with respect to an Amended Proposed Decision entered on April 22, 1970. No oral hearing requested.

Hearing on the record held on March 31, 1971

FINAL DECISION

Under date of April 22, 1970, the Commission issued its Amended Proposed Decision certifying losses in favor of WARREN AND ARTHUR SMADBECK, INC. (SMADBECK) and ST. AUGUSTINE SOUTH, INC. (ST. AUGUSTINE) in the amounts of \$40,616.44 and \$85,688.53, respectively. Portions of the claim based upon asserted 100% stock interests in three Cuban corporations - Presidente Corporation (Presidente), Gulfview Hotel, S.A. (Gulfview) and North Shore Real Estate Corporation (North Shore) - were denied for failure to establish that the stock interests had any value on October 24, 1960, the date of loss. Another portion of the claim based upon certain items of real property in Cuba was denied for failure to establish ownership of the properties.

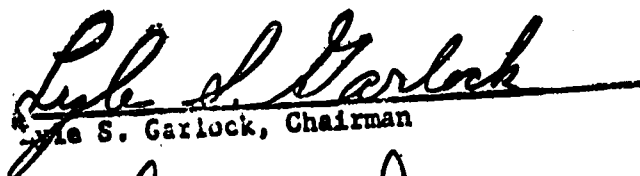
Claimants objected to the denial of portions of their claim and submitted two affidavits in support of their contention that those portions of the claim should be allowed. The gist of their contention is that the value of Presidente on the date of loss was the same as shown in the balance sheet as of March 31, 1958; that Gulfview was operating profitably as shown by its

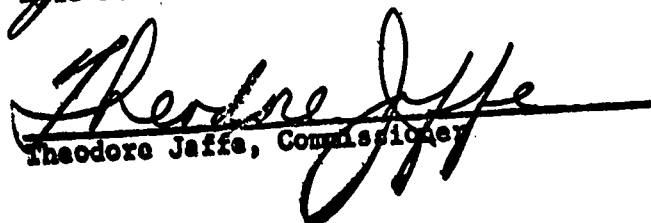
balance sheet as of December 31, 1957 and that its fixed assets would have remained the same as of the date of loss; that North Shore owned a stock interest in another Cuban corporation which had purchased land costing \$38,499.08; and that with respect to the asserted real property the swimming pool alone cost \$32,000.00 and had been rented to Presidente.

Upon consideration of this entire matter, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Amended Proposed Decision of April 22, 1970 is affirmed in all respects.

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

APR 14 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

WARREN AND ARTHUR SMADBECK, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2465

Decision No. CU 967

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 \$275,249.99, was presented by WARREN AND ARTHUR SMADBECK, INC., and is based upon the asserted loss of stock interests in Cuban corporations; debts owed by Cuban entities; a bank account; and currency. An officer of claimant corporation has certified that claimant is a national 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 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).)

Other than the statements as set forth in the claim form, filed on April 28, 1967, no evidence was submitted in support of this claim. Accordingly, by Commission letter of August 22, 1967, suggestions were made to claimant corporation as to the type of evidence proper for submission to establish this claim under the Act. No evidence was submitted in reply to the Commission's suggestions.

Subsequently, by Commission letter of October 2, 1967, claimant corporation was invited to submit any evidence available to it within 45 days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Although claimant corporation has since corresponded with the Commission, no evidence has been submitted.

CU-2465

The Commission finds that claimant corporation has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is 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

**JAN 17 1968**

*Edward S. Re*

Edward S. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

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

*Walter M. ...*  
Clerk of the Commission

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).)