

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

IN THE MATTER OF THE CLAIM OF

W. E. DUNWODY, JR. and THE
FIRST NATIONAL BANK OF MIAMI,
EXECUTORS OF THE ESTATE OF
ARTHUR V. DAVIS, DECEASED

Claim No. CU-2620

Decision No. CU - 5970

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

Mershon, Sawyer, Johnston,
Dunwody & Cole
By Robert G. Lilly, 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 \$4,312,424.31, was presented by W. E. DUNWODY, JR. and THE FIRST NATIONAL BANK OF MIAMI, EXECUTORS OF THE ESTATE OF ARTHUR V. DAVIS, DECEASED, based upon the asserted loss of certain real and personal property in Cuba. The deceased and all beneficiaries of his estate have been nationals of the United States at all pertinent times.

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.

The record shows that the deceased died on November 17, 1962, and that his last will and codicil (Exhibit B) were duly admitted to probate (Exhibit A). The executors of his estate assert the following losses:

Land	\$3,942,588.12 ✓
Farm equipment	13,238.44 ✓
Operadora Pinera, S.A. stock interest	138,101.00
Bank accounts	143,496.75 ✓
Mortgage	<u>75,000.00 ✓</u>
Total	<u>\$4,312,424.31</u>

Land

The evidence includes the following:

Copies of deeds evidencing the purchase of certain land on the Isle of Pines, Cuba (Exhibits R, S and U); copy of an agreement pursuant to which the deceased acquired additional land on the Isle of Pines, Cuba (Exhibit Y); an affidavit, dated October 10, 1963, from the former Cuban attorney for the deceased, reciting that the deceased had acquired all of the outstanding capital stock of a certain Cuban corporation, and that upon liquidation of the corporation on December 27, 1957, all land of the corporation on the Isle of Pines, Cuba was transferred to the deceased (Exhibit X); copies of official documents indicating that the deceased paid real estate taxes to Cuban authorities on the Isle of Pines, Cuba (Exhibit W); copy of a Notarial Document reciting facts concerning the deceased's property on the Isle of Pines, Cuba (Exhibit H); and copies of documents based on the registration in the name of the deceased of title to property on the Isle of Pines, Cuba (Exhibits I and J).

On the basis of the foregoing, the Commission finds that the deceased owned approximately 207,313 acres of land on the Isle of Pines, Cuba. The

Commission further finds on the basis of a copy of an official document (Exhibit G) that said land was taken by the Government of Cuba on October 13, 1960 pursuant to the Agrarian Reform Law.

Claimants assert the loss of \$3,942,588.12 on account of the land, based upon the costs thereof. The assertion is supported by an affidavit of the former bookkeeper for the deceased (Exhibit K) who sets forth the costs of the various pieces of property based upon books and records in his custody, including copies of vouchers and cancelled checks (Exhibit L); and copies of other pertinent documents (Exhibit M).

Based upon the entire record, the Commission finds that claimants' valuations are fair and reasonable. Accordingly, the Commission finds that the aggregate value of the land on October 13, 1960, the date of loss, was \$3,942,588.12, and concludes that the deceased sustained a loss in that amount.

Farm Equipment

The Commission finds on the basis of the evidence of record that the deceased owned certain farm equipment used in connection with his land on the Isle of Pines, Cuba. The Commission further finds that said farm equipment was taken by the Government of Cuba on October 13, 1960 when the land was taken.

The record includes copies of tax returns for the estate of the deceased indicating that tax deductions were allowed for the Cuban losses asserted herein (Exhibit O). Attached to the tax returns is a list of the farm equipment showing the depreciated value thereof on the date of loss.

Based upon the foregoing evidence, the Commission finds that the aggregate value of said personal property on October 13, 1960, the date of loss, was \$13,238.44, and concludes that the deceased sustained a loss in that amount.

Operadora Pinera, S. A.

The record includes copies of stock certificates evidencing that the deceased owned 85 shares of stock in Operadora Pinera, S.A. (Pinera), a

Cuban corporation (Exhibit N). It further appears that 2 shares of stock in Pinera were held by one Mrs. Eunice W. Healy as trustee for the deceased. (Letter of July 7, 1960.)

Based on the entire record, the Commission finds that the deceased owned 87 shares of stock in Pinera, constituting all of its outstanding capital stock as indicated hereafter.

On December 6, 1961, Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, and other property rights of persons who left Cuba. The Commission finds that this law applied to the deceased who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that the deceased's stock interest in Pinera 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].)

Since Operadora Pinera, 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.)

The evidence includes copies of deeds establishing that Pinera had acquired certain improved real property on the Isle of Pines, Cuba (Exhibits T and V); and copies of trial balances as of December 31, 1959 and December 31, 1960 for Pinera.

Claimants assert a loss of \$138,101.00 on account of the deceased's 100% stock interest in Pinera, based upon the cost thereof.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimants is that shown by the last available financial statement for Pinera, the trial balance as of December 31, 1960. That trial balance indicates the financial condition of Pinera as follows, the Cuban peso being on a par with the United States dollar:

<u>Assets</u>		
Cash		\$ 14.25
Properties, at cost		93,666.94
Furniture and Fixtures	\$ 548.41	
Less depreciation	<u>164.52</u>	383.89
Organization expenses, after amortization		<u>79.33</u>
Total Assets		<u><u>\$94,144.41</u></u>

<u>Liabilities and Capital</u>		
Accounts payable		\$ 1,310.95
Taxes payable		73.09
Amount owed to the deceased		37,858.37
Capital - 87 shares at \$1,000.00 per share	\$87,000.00	
Less deficit and expenses	<u>32,098.00</u>	<u>54,902.00</u>
Total Liabilities and Capital		<u><u>\$94,144.41</u></u>

Accordingly, the Commission finds that the net worth of Pinera on December 6, 1961, was \$54,902.00. It is therefore concluded that the deceased sustained a loss in that amount.

As noted above, Pinera was indebted to the deceased in the amount of \$37,858.37. The Commission has held that claims based on debts due from 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].) The Commission therefore finds that the deceased sustained a further loss in the amount of \$37,858.37.

Bank Accounts

The Commission finds on the basis of an affidavit, dated November 13, 1964, from the deceased's former Cuban attorney that he had held \$136,300.00

for the benefit of the deceased and had deposited it in a local bank in Cuba (Exhibit P and counsel's statements of November 4, 1970). The Commission further finds that another agent of the deceased had deposited \$7,196.75 in a local Cuban bank for the benefit of the deceased (Exhibit Q). Therefore, the deceased owned bank accounts in Cuba aggregating \$143,496.75.

Pursuant to Law 989 of December 6, 1961, supra, all properties of persons who left Cuba, including bank accounts, were taken by the Government of Cuba. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].) In the absence of evidence to the contrary, the Commission finds that the deceased sustained a loss in the amount of \$143,496.75 on December 6, 1961 on account of his bank accounts in Cuba.

Mortgage

Based upon a copy of a mortgage (submitted with counsel's letter of December 11, 1967), and an agreement, dated October 11, 1956, accompanied by an explanatory letter of April 25, 1958 (in Exhibit Y), the Commission finds that the deceased owned a mortgage on certain land on the Isle of Pines, Cuba.

Pursuant to Article 30 of the Urban Reform Law of October 14, 1960, all mortgages on property in Cuba were cancelled, thereby giving rise to claims against the Government of Cuba. (See Claim of the Estate of Marita Dearing de Lattre, Deceased, Claim No. CU-0116.)

The record establishes that the unpaid amount of the deceased's mortgage on October 14, 1960, the date of loss, was \$75,000.00. The Commission therefore finds that the deceased sustained a loss in that amount.

Recapitulation

The losses sustained by the deceased within the scope of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Land	October 13, 1960	\$3,942,588.12
Farm equipment	October 13, 1960	13,238.44
Pinera - stock interest	December 6, 1961	54,902.00
Debt due from Pinera	December 6, 1961	37,858.37
Bank accounts	December 6, 1961	143,496.75
Mortgage	October 14, 1960	<u>75,000.00</u>
	Total	<u>\$4,267,083.68</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 13, 1960	\$3,955,826.56
October 14, 1960	75,000.00
December 6, 1961	<u>236,257.12</u>
Total	<u>\$4,267,083.68</u>

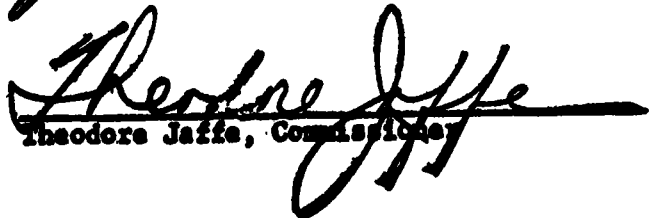
CERTIFICATION OF LOSS

The Commission certifies that W. E. DUNWODY, JR. and THE FIRST NATIONAL BANK OF MIAMI, EXECUTORS OF THE ESTATE OF ARTHUR V. DAVIS, DECEASED, 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 Four Million Two Hundred Sixty-seven Thousand Eighty-three Dollars and Sixty-eight Cents (\$4,267,083.68) with interest 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

NOV 23 1970


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