

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

IN THE MATTER OF THE CLAIM OF

HARRY G. SMITH
LOUISE F. SMITH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0499

Decision No. CU 5850

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HARRY G. SMITH and LOUISE F. SMITH for \$34,494.62 based upon the asserted ownership and loss of personalty, cash, a stock interest and an interest in a business enterprise. 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 describe their losses as follows:

Personal and household effects	\$18,000.00
45% interest in W. Harry Smith Agencies	11,119.88
25 shares of Cuban Telephone Company	2,500.00
Bank account, expended in maintenance	865.99
Account Receivable of W. Harry Smith Agencies	508.75
Cash with individual	1,000.00
Cash with caretaker	<u>500.00</u>
	\$34,494.62

Claimants assert that the personalty was taken on April 22, 1961 but that W. Harry Smith Agencies was intervened on September 20, 1961.

Cash and Bank Account

Claimants list these items as:

Royal Bank of Canada bank account in the amount of \$865.99, which was said, however, to have been expended in an effort to maintain the home;

Cash in the amounts of \$1,000.00 and \$500.00, left with two individuals for maintenance and caretaking of the home. Claimant HARRY G. SMITH stated in his letter of June 13, 1968 that these funds were presumably expended before the residence was taken over.

There is no evidence of record that these items have been taken by the Government of Cuba and accordingly they are denied.

Personal and Household Effects

The Commission finds that claimants owned certain personal and household effects at their residence in Marianao. Claimants have submitted a list of personal properties left at the home. These are described as accumulated throughout 28 years. The list which in fact totals \$17,300.00, has been examined and the Commission finds the asserted values fair and reasonable.

Accordingly, the Commission finds that claimants suffered an aggregate loss of \$17,300.00 by reason of the taking of this property on April 22, 1961.

Cuban Telephone Stock

Claimants submitted Cuban Telephone Company stock certificate for 25 shares issued to them in 1957, and the Commission finds that claimants owned 25 shares of Cuban Telephone Company.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960.

The Commission has found that on the date of loss each share of common stock of Cuban Telephone Company had a value of \$184.0057 and concludes that claimants each sustained a loss in the amount of \$2,300.07, within the scope of Title V of the Act.

The W. Harry Smith Agencies

The Commission finds that claimants owned 45 shares of The W. Harry Smith Agencies, S.A. out of an issued 100 shares. This Cuban enterprise was an agency for steamship lines and also conducted a travel agency business. The enterprise was intervened by the Government of Cuba on September 20, 1961.

Claimants assert \$11,119.88 as the value of their stock interest; and further assert an interest in an account receivable of the agency in the amount of \$508.75.

Claimants' memorandum of November 3, 1963 recited the following figures in connection with this enterprise:

Assets			
Furniture & fixtures, depreciated			\$ 1,711.56
Balance in Royal Bank			16,514.58
Other assets			<u>13,414.41</u>
			\$31,640.55
Liabilities		\$ 6,928.94	
Capital	\$10,000.00		
Reserve	9,223.21		
Profits	<u>5,487.64</u>	<u>24,710.85</u>	
			\$31,639.79

This memorandum also recites that the Agency Cashier added \$508.75 to the above-mentioned Royal Bank account of \$865.99 and continues that the entire sum was used to defray household expenses until it was taken over.

In calculating the present value of the stock interest, claimants apply the 45% interest to the above \$24,710.85.

The record includes the listing of office furnishings taken over, for which a value of \$1,711.56 appears reasonable.

Claimants have also submitted an original carbon of a statement they received between 1961 and 1963, and used in 1963. This reflects, in translation, the following:

Cash	\$16,514.98	
Current Accounts	<u>11,502.31</u>	\$28,016.89
Liabilities		<u>6,928.94</u>
		\$21,087.95
Deferred charges	\$ 144.14	
Fixed Assets	1,711.56	
Past due accounts	<u>1,767.96</u>	<u>3,623.66</u>
		\$24,711.76 <u>sic</u>
Capital	\$10,000.00	
Reserves	9,223.21	
Profit	<u>5,488.40</u>	\$24,711.76 <u>sic</u>

The Commission finds on the basis of the record, which also includes an affidavit of a former Vice President of the agency, that on the date of intervention the agency had a net worth of \$24,711.61 and claimants' interest therein was \$11,120.22.

Other Items

The record reflects that in early 1961 claimants placed 1,500 Cuban pesos in a private depository and 40.20 pesos were added thereto (the Cuban peso being on a par with the dollar). This currency was outside of the territory under the jurisdiction of the Cuban State, and was automatically declared null and of no legal force under Article XI of Cuban Law 963, published on August 4, 1961. (See Claim of Betty G. Boyle, Claim No. CU-3473.)

Accordingly, the Commission finds that this constituted a taking of claimants' property within the contemplation of Title V of the Act and that they suffered a loss in the aggregate amount of \$1,540.20 on that date.

Additionally it appears that an automobile left by claimants in Cuba was sold in June 1964 for 600 pesos which, as of January 5, 1966, were being held for claimants in a New Cuban Peso trust fund account. It does not appear that this account has been taken by the Government of Cuba.

Recapitulation

Claimants' losses may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
<u>HARRY G. SMITH</u>		
Personalty	April 22, 1961	\$ 8,650.00
Cutelco Stock	August 6, 1960	2,300.07
Smith Agency	September 20, 1961	5,560.11
Currency	August 4, 1961	<u>770.10</u>
		\$17,280.28
<u>LOUISE F. SMITH</u>		
Personalty	April 22, 1961	\$ 8,650.00
Cutelco Stock	August 6, 1960	2,300.07
Smith Agency	September 20, 1961	5,560.11
Currency	August 4, 1961	<u>770.10</u>
		\$17,280.28

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.

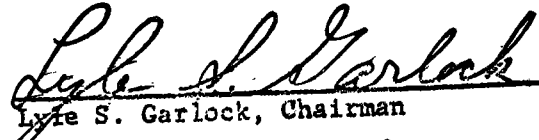
CERTIFICATIONS OF LOSS

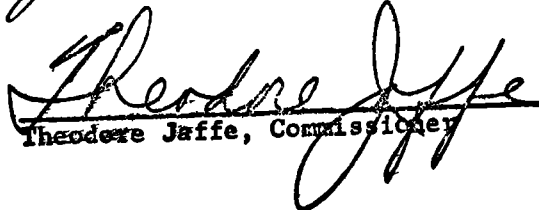
The Commission certifies that HARRY G. SMITH suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventeen Thousand Two Hundred Eighty Dollars and Twenty-eight Cents (\$17,280.28) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

The Commission certifies that LOUISE F. SMITH 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 Seventeen Thousand Two Hundred Eighty Dollars and Twenty-eight Cents (\$17,280.28) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

SFP 16 1970


Lytle 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).)