

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

IN THE MATTER OF THE CLAIM OF

PHYLLIS HARPER SMITH  
MILDRED HARPER MICHAEL  
MARGARET A. BOSTWICK HARPER  
ELEANOR ELIZABETH PARDO HARPER  
CECIL SMITH

Claim No. CU-1532

Decision No. CU-5734

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Cecil Smith, Esquire

Appeal and objections from a Proposed Decision entered August 19, 1970.

Oral argument November 4, 1970, by Cecil Smith, Esquire.

FINAL DECISION

Under date of August 19, 1970, the Commission issued a Proposed Decision on this claim finding that three claimants wholly owned the Cuban entity "Proprietaria de Bienes San Luis, S. A." and certifying losses to them in the aggregate amount of \$60,000.00 plus interest. Subsequently, additional evidence was submitted, and oral testimony and arguments were presented at a hearing held on November 4, 1970.

Upon consideration of the new evidence in the light of the entire record, the Commission now finds that on June 30, 1962, the date of loss, the 210 shares of outstanding capital stock of Proprietaria de Bienes San Luis, S. A., a Cuban corporation, were owned as follows:

Phyllis Harper Smith	67 shares
Mildred Harper Michael	67 shares
Robert Osborne Harper (whose interest thereafter passed to Margaret A. Bostwick Harper, his widow)	67 shares
Cecil Smith	8 shares
Eleanor Elizabeth Pardo Harper	<u>1 share</u>
	210 shares

The claim of Eleanor Elizabeth Pardo Harper based upon one share of stock in the Cuban corporation must be and hereby is denied because her claim was not owned by a national of the United States on the date of loss, a prerequisite to favorable action under Section 504(a) of the Act, which provides as follows:

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 Commission further finds that on June 30, 1962 the value of the land in Havana, Cuba owned by the Cuban corporation, measuring 1,471.07 square meters in area, at the rate of \$40.00 per square meter, was \$58,842.80. This is based upon the opinion of a former officer of the Colgate-Palmolive Company who has personal knowledge of the values of land in the area in question.

Moreover, the Commission finds that the value of the concrete and steel building situated on the land was \$80,000.00 on June 30, 1962, based upon the following considerations:

a. It was located in one of the best areas in Havana, Cuba, and was maintained in excellent condition, evidenced by affidavits and photographs.

b. It had a large refrigeration plant, an air conditioning system, two 35,000 gallon tanks, and a railroad siding, evidenced by affidavits, by a copy of the lease with a Cuban corporation which was in possession on the date of loss, and by sketches of the property.

Accordingly, the Commission finds that the net worth of the Cuban corporation on June 30, 1962, the date of loss, was \$138,842.80, the Cuban corporation owning no other assets and owing no debts. Since the Cuban corporation had 210 shares of outstanding capital stock on the date of loss, each share had a value of \$661.15619. Therefore, the value of 67 shares was \$44,297.46, and the value of 8 shares was \$5,289.25.

The Commission thus finds that PHYLLIS HARPER SMITH, MILDRED HARPER MICHAEL and Robert Osborne Harper, whose interest was inherited by MARGARET A. BOSTWICK HARPER, each sustained a loss in the amount of \$44,297.46 and CECIL SMITH sustained a loss in the amount of \$5,289.25 within the meaning of Title V of the Act.

Accordingly, the Certifications of Loss recited in the Proposed Decision are set aside and the following Certifications of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that PHYLLIS HARPER 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 Forty-Four Thousand Two Hundred Ninety-Seven Dollars and Forty-Six Cents (\$44,297.46) with interest thereon at 6% per annum from June 30, 1962 to the date of settlement; and


The Commission certifies that MILDRED HARPER MICHAEL 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-Four Thousand Two Hundred Ninety-Seven Dollars and Forty-Six Cents (\$44,297.46) with interest at 6% per annum from June 30, 1962 to the date of settlement; and

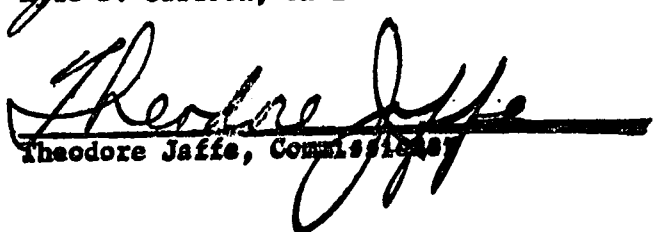
The Commission certifies that MARGARET A. BOSTWICK HARPER succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Four Thousand Two Hundred Ninety-Seven Dollars and Forty-Six Cents (\$44,297.46) with interest at 6% per annum from June 30, 1962 to the date of settlement; and

The Commission certifies that CECIL 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 Five Thousand Two Hundred Eighty-Nine Dollars and Twenty-Five Cents (\$5,289.25) with interest at 6% per annum from June 30, 1962 to the date of settlement.

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

NOV 17 1970

  
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**

PHYLLIS HARPER SMITH  
MILDRED HARPER MICHAEL  
MARGARET A. BOSTWICK HARPER  
ELEANOR ELIZABETH PARDO HARPER  
CECIL SMITH

**Claim No. CU-1532**

**Decision No. CU 5734**

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

Counsel for claimants

Cecil Smith, Esquire

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 \$399,000.00, was presented originally on behalf of PHYLLIS HARPER SMITH, MILDRED HARPER MICHAEL, ROBERT OSBORNE HARPER, ELEANOR ELIZABETH PARDO HARPER and CECIL SMITH.

All of the foregoing have been nationals of the United States since birth except ELEANOR ELIZABETH PARDO HARPER who acquired United States nationality on December 6, 1963. On August 12, 1967 after the date of filing, ROBERT OSBORNE HARPER died intestate and his interest in the subject matter of this claim was inherited by his widow, MARGARET A. BOSTWICK, who has been substituted as claimant in place of the deceased. The claim is based upon the loss of stock interests in a Cuban corporation.

Under Title V of the International Claim 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 evidence includes copies of stock certificates indicating that the 210 shares of outstanding capital stock in Propietaria de Bienes San Luis, S.A. were owned as follows:

PHYLLIS HARPER SMITH	67 shares
MILDRED HARPER MICHAEL	66 shares
ROBERT OSBORNE HARPER	67 shares
ELEANOR ELIZABETH PARDO HARPER	1 share
CECIL SMITH	8 shares
A Cuban national associated with the corporation	1 share

Subsequently, it was asserted by CECIL SMITH, who was formerly counsel for the Cuban corporation, that the two single shares held by the two indicated persons were not beneficially owned by them, but merely held on behalf of the other true stockholders. It appears that the Cuban corporation was organized by the Harper family and that three members thereof, PHYLLIS HARPER SMITH, her sister, MILDRED HARPER MICHAEL, and her brother, ROBERT OSBORNE HARPER, owned all of the shares of stock in equal proportions. The record contains a copy of an agreement, dated November 28, 1959, in which it is recited that the said three members of the Harper family owned all of the stock, 1/3 each.

On the basis of the entire record, the Commission finds that PHYLLIS HARPER SMITH, wife of CECIL SMITH, and MILDRED HARPER MICHAEL, and ROBERT OSBORNE HARPER each owned a 1/3 interest in the Cuban corporation. As noted above, the late ROBERT OSBORNE HARPER's interest was inherited by his widow, MARGARET A. BOSTWICK HARPER, upon his death on August 26, 1967.

Accordingly, the Commission finds that ELEANOR ELIZABETH PARDO HARPER and CECIL SMITH owned no interest in the Cuban corporation. Therefore, their claims are denied.

The evidence establishes that the Cuban corporation owned certain improved real property in Havana, Cuba, and was engaged in packing pork products, lard, vegetable oils and certain fruits on said premises. It further appears from copy of an agreement, dated September 26, 1955 that said improved property together with all its facilities were rented to Viveres, S.A., another Cuban corporation. In an affidavit, dated April 22, 1970, CECIL SMITH stated that the property belonging to Propietaria de Bienes San Luis, S.A. was seized by the Cuban Government and that the tenant was forced to vacate.

The Commission has found that Viveres, S.A. was nationalized by the Government of Cuba on June 30, 1962. (See Claims of the Estate of Alvin W. Kline, Deceased, Claim Nos. CU-2158 and CU-2159.) The Commission, therefore, finds that the improved real property and all its facilities, belonging to Propietaria de Bienes San Luis, S.A., were taken by the Government of Cuba on June 30, 1962.

Propietaria de Bienes San Luis, S.A., was organized under the laws of Cuba and cannot qualify as a corporate "national of the United States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of 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 sole remaining issue is the value of claimants' stock interests.

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.

Claimants assert that the Cuban corporation's assets consisted of land, a building and a bank account, which they evaluate at \$80,000.00, \$315,000.00, and \$4,000.00, respectively. Apparently, no balance sheets or other financial statements for the corporation as of the date of loss are available. Two documents submitted by claimants indicate: (a) that the corporation's earnings for the year 1954, amounted to \$5,165.66; and (b) that as of December 31, 1958, the corporation's principal assets were land and building carried at cost, \$20,000.00, less depreciation of \$340.00; and cash in the amount of \$5,724.59; and that its liabilities were insignificant.

The Commission finds that said documents provide an insufficient basis on which to determine the value of stock interests in the corporation on the date of loss.

The record includes photographs of the property. It appears from counsel's letter of August 21, 1968 that the building was constructed by the Harper family in the 1920's. A report from abroad corroborates the fact that the land and building, which included refrigerator storage, a smoke house and a siding for railroad cars, was acquired by the Cuban corporation on December 11, 1945 for \$20,000.00. In counsel's affidavit of April 22, 1970, he stated that the tenant had "constructed all refrigeration including cells and air conditioning systems plus the two 35,000 gallon steel storage tanks and railroad siding." The lease of September 26, 1955 with the tenant, Viveres, S.A., provides for a monthly rental of \$500.00 and requires the tenant to make necessary repairs in order to maintain the property in good condition.

Based upon the entire record and taking into consideration the fact that the improved real property and all its facilities were leased at \$6,000.00 per year, the Commission finds that the value of the Cuban corporation's property on June 30, 1962, the date of loss, was \$60,000.00. Therefore, PHYLLIS HARPER SMITH, DRED HARPER MICHAEL and ROBERT OSBORNE HARPER, whose interest was inherited by MARGARET A. BOSTWICK HARPER, each sustained a loss in the amount of \$20,000.00.



A portion of the claim in the amount of \$4,000.00 is based upon a bank account assertedly maintained at the First National Bank of Boston, Havana Branch. In counsel's letter of September 10, 1969, he stated that the bank balance was \$3,491.92; and that since the funds were in danger of being seized, he had authorized the treasurer to withdraw the funds and turn them over to George K. Harper "to use in settlement of some local personal obligations." Claimants have submitted an affidavit dated November 6, 1969, from George K. Harper indicating that he received the \$3,491.92 from the treasurer of the Cuban corporation, and that "Due to the confiscation of all my property and assets these funds were lost along with mine."

The Regulation 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) (1969).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to taking by the Government of Cuba of the item of claim based upon a bank account or funds. Accordingly, this portion of the claim is denied.

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.

#### CERTIFICATION OF LOSS

The Commission certifies that PHYLLIS HARPER 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 Twenty Thousand Dollars (\$20,000.00) with interest thereon at 6% per annum from June 30, 1962 to the date of settlement; and

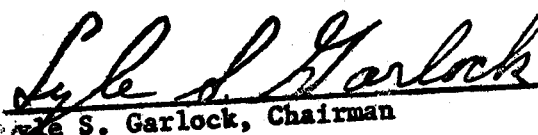
CU-1532

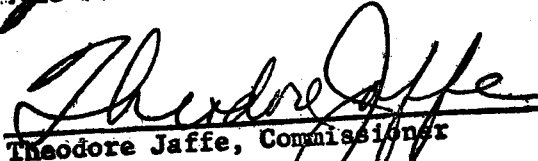
The Commission certifies that MILDRED HARPER MICHAEL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Dollars (\$20,000.00) with interest at 6% per annum from June 30, 1962 to the date of settlement; and

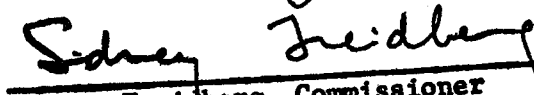
The Commission certifies that MARGARET A. BOSTWICK HARPER succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Dollars (\$20,000.00) with interest at 6% per annum from June 30, 1962 to the date of settlement.

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

**AUG 19 1970**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, 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 claimant establishes 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).)

CU-1532