

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

IN THE MATTER OF THE CLAIM OF

ALBERT WEISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1700

Decision No. CU - 4632

Counsel for claimant:

White & Lieberman
By: Oscar A. White, 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 \$651,547.61, was presented by ALBERT WEISS based upon the asserted loss of an interest in a Cuban partnership, and certain other personal property in Cuba. Claimant has been a national of the United States since April 27, 1945.

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.

PARTNERSHIP

The record includes copies of documents filed with Cuban authorities evidencing the fact that claimant acquired in 1958 a one-half interest in the partnership La Industrial Z. Weiss & Cia., a legal entity under the laws of Cuba. Based upon the foregoing as well as affidavits from claimant and his father, the other partner, the Commission finds that claimant thus held a one-half interest in the said Cuban partnership. It further appears from the record that claimant was married to a nonnational of the United States at the time he acquired the partnership interest, and that his wife never acquired nationality of the United States. The Commission finds that pursuant to the community property laws of Cuba, claimant's wife acquired a one-half interest in the property claimed herein. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Inasmuch as she is not a national of the United States, she is ineligible under Title V of the Act and consequently, no claim has been filed by her or on her behalf. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].) Accordingly, the Commission finds that the extent of claimant's interest in the Cuban partnership was 25%.

On the basis of affidavits from individuals with personal knowledge of the facts, the Commission finds that the Cuban partnership was taken by the Government of Cuba on November 13, 1961, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence includes a copy of a general trial balance for the Cuban partnership as of June 30, 1961, a copy of a bank statement indicating the Cuban partnership's bank balance as of July 31, 1961, and statements made to the Internal Revenue Service in connection with claimant's asserted tax deductions for his Cuban losses which were allowed in his 1962 and 1963 tax returns. The record also contains a profit and loss statement for the Cuban partnership as of June 30, 1961 which was prepared by claimant's former accountant in Cuba from the general trial balance.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the general trial balance as of June 30, 1961, except as noted below. Claimant has indicated that no other financial statements or other appropriate information concerning the value of the Cuban partnership is available.

The profit and loss statement indicates that as of June 30, 1961, the Cuban partnership had a profit of \$334,434.46, the Cuban peso being on a par with the United States dollar. After eliminating from the general trial balance the items which were used to prepare the profit and loss statement, the remaining items of the general trial balance would constitute the balance sheet for the Cuban partnership as of June 30, 1961, as follows:

CU-1700

ASSETS

Accounts receivable	\$101,195.01
Cash	83,376.42
Bank of Canada	195,309.50
Inventory	197,361.21
Advances to employees	450.00
Sign, less depreciation	133.00
Truck, less depreciation	4,088.50
Furniture	3,257.44
Deposits	112.55
Improvements	281.58
Prepaid expenses	<u>1,942.97</u>
Total	\$587,508.18

LIABILITIES AND CAPITAL

Liabilities:		
Vouchers payable	\$ 5,233.59	
Taxes payable	<u>5,575.83</u>	\$ 10,809.42
Capital:		
Zischa Weiss	\$100,519.90	
Albert Weiss	<u>141,744.40</u>	
	\$242,264.30	
Undistributed profit	<u>334,434.46</u>	<u>576,698.76</u>
Total		\$587,508.18

The record establishes that profits were to be divided on an equal basis between the two partners. Accordingly, claimant's capital account would appear as follows after division of the undistributed profit:

Shown in balance sheet	\$141,744.40
One-half of undistributed profit (\$334,434.46)	<u>167,217.23</u>
Total	\$308,961.63

Inasmuch as claimant's wife owned a one-half interest in his property, claimant's interest in the Cuban partnership had a value of \$154,480.82 on November 13, 1961, the date of loss.

OTHER PERSONAL PROPERTY

The Commission finds on the basis of the evidence of record that claimant and his wife each owned a one-half interest in certain furniture and other personal belongings in Cuba, including a 1958 Ford automobile.

On December 6, 1961, the Cuban Government published Law 989, which effected a taking of real property, personal property, rights, shares, stocks,

bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant and his wife, who had left Cuba prior to that date, and that his interest in the above personal property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

On the basis of the entire record, including the evidence submitted to the Internal Revenue Service, the Commission finds that the aggregate value of the items of personal property, including the automobile, was \$9,712.50 on December 6, 1961, the date of loss. Therefore, claimant's one-half interest therein had an aggregate value of \$4,856.25.

Accordingly, claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Partnership interest	November 13, 1961	\$154,480.82
Other personal property	December 6, 1961	<u>4,856.25</u>
	Total	<u>\$159,337.07</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 the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
November 13, 1961	\$154,480.82
December 6, 1961	<u>4,856.25</u>
Total	<u>\$159,337.07</u>

CU-1700

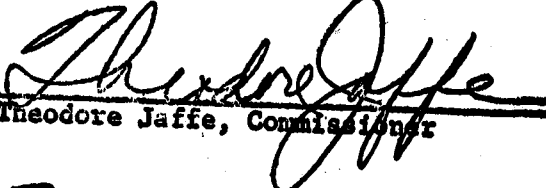
CERTIFICATION OF LOSS

The Commission certifies that ALBERT WEISS 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 One Hundred Fifty-nine Thousand Three Hundred Thirty-seven Dollars and Seven Cents (\$159,337.07) with interest thereon 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

15 MAR 1970


Lyne 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 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-1700