

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

IN THE MATTER OF THE CLAIM OF

MILTON H. DAVIS, JR.

Claim No. CU - 2841

Decision No. CU 6009

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Kurt Wellisch, 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 amount of \$82,024.00 was presented by MILTON H. DAVIS, JR., based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national 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.

Claimant asserts the following losses:

100% stock interest in Inmobiliaria Davis, S.A.	\$56,000.00
49 acres of land in Nueva Gerona, Isle of Pines, Cuba	13,716.00
Lot 2, Block 3, Howard Subdivision, Nueva Gerona, Isle of Pines, Cuba	1,825.00
Lot 7, Block 3 and Lot 17, Block 5	1,200.00
50 acres, Cuchilla Alta, in Nueva Gerona, Isle of Pines, Cuba	8,295.00
Lot 7, Block 9, Davis Ranches Grandes, Nueva Gerona, Isle of Pines, Cuba	988.00
Total	<u>\$82,024.00</u>

Inmobiliaria Davis, S.A.

The evidence includes copies of stock certificates; an affidavit of October 20, 1970 from claimant's father; affidavits of October 20, 1970 and November 11, 1970 from a former business associate of claimant's father and from the former Mayor of the Isle of Pines, Cuba, setting forth facts based upon personal knowledge; and an affidavit of November 9, 1970 from claimant. On the basis of the foregoing evidence, the Commission finds that claimant acquired in June 1955 by gift from his father all of the outstanding capital stock of Inmobiliaria Davis, S.A. (Davis Properties, Inc.), a Cuban corporation.

Based upon a copy of an original deed and affidavits from individuals having personal knowledge of the facts, the Commission further finds that the assets of Davis Properties, Inc. consisted of certain improved real property in Nueva Gerona, Isle of Pines, Cuba, including furniture

and furnishings for 2 houses situated on the land; and certain other lots in the same area of Nueva Gerona.

The Commission further finds that the improved real property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the improved real property and the contents of the 2 houses were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

On December 6, 1961, Cuba published Law 989 in its Official Gazette which effected a confiscation of all assets, real property, personal property and other property rights of persons who left Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the lots belonging to Davis Properties, Inc. were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]); Claim of Boger & Crawford, Claim No. CU-0037.)

Since Davis Properties, Inc. 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.)

On the basis of the entire record, the Commission makes the following findings:

Improved Real Property:

1. The land on which the two houses were situated was located in a desirable area of Nueva Gerona, and had a value of \$15,000.00 on October 14, 1960, the date of loss.

2. The main house, containing 3 bedrooms, 2 bathrooms, a living room, dining room, kitchen, veranda, patio and carport, had a value of \$20,000.00 on the date of loss.

3. The guest house had a value of \$3,000.00 on the date of loss.

4. A fruit orchard situated on the property, containing 100 trees producing oranges, grapefruits, mangos, avocados and other native fruits, had a value of \$5,000.00 on the date of loss.

5. Davis Properties, Inc. had no liabilities on the date of loss.

Accordingly, the Commission finds that the aggregate value of the improved real property owned by Davis Properties, Inc. on the date of loss was \$43,000.00.

Unimproved Real Property:

The Commission further finds on the basis of evidence of record that the six lots in Reparto Las Casas, Isle of Pines had a value of \$6,000.00 on December 6, 1961, the date of loss.

Contents of the 2 Houses:

The record establishes and the Commission finds that the 2 houses contained the following items of personal property, listed with the costs thereof:

3 air conditioners at \$500.00 each	\$1,500.00
T.V. and radio	500.00
3 bedroom suites	2,250.00
Living room furniture	1,500.00
Dining room furniture	225.00
Kitchen furniture	50.00
2 stoves	250.00
2 refrigerators	500.00
Dishes, glassware, tableware, pots and pans, etc.	100.00
Carpets, drapes and curtains	300.00
Veranda and patio furniture	350.00
Total	<u>\$7,525.00</u>

The Commission notes that the air conditioners, television, radio, stoves, refrigerators, rugs, drapes, dishes, pots and pans and kitchenware are subject to depreciation at the rate of 10% per year, while furniture is subject to a 5% per year depreciation rate. The record fails to indicate the dates when the foregoing items of personal property were acquired. However, it appears that these items were in existence in 1955 when claimant acquired his stock interest in Davis Properties, Inc. In the absence of evidence to the contrary, the Commission finds that the personal property should be depreciated for 5 years to arrive at the aggregate value thereof on October 14, 1960, the date of loss.

Accordingly, the Commission finds that the items of personal property had the following values on the date of loss:

Items costing \$3,150.00, depreciated at 10% per year for 5 years	\$1,575.00
Items costing \$4,375, depreciated at 5% per year for 5 years	<u>3,282.25</u>
Total	<u>\$4,857.25</u>

The Commission therefore finds that the aggregate values of the assets owned by Davis Properties, Inc. on October 14, 1960, and December 6, 1961, respectively, were \$47,857.25 and \$6,000.00. Inasmuch as this corporation had no obligations on the date of loss, claimant's stock interest in the corporation had a value of \$53,857.25.

49 Acres of Land in Nueva Gerona

The Commission finds on the basis of a copy of the original deed No. 272 of August 3, 1958 that claimant acquired certain parcels of land, constituting part of Colonia Reine Amalia on the Isle of Pines, Cuba, having an area of 49.06 acres. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

It appears from the evidence of record that claimant was married at the time he purchased said property. Therefore his wife acquired a 1/2 interest in the property pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

It may be noted that the community property laws of Cuba did not apply to property acquired by gift, by inheritance, or acquired prior to marriage. Therefore, claimant's wife had no interest in the shares of stock in Davis Properties, Inc. (supra).

The record includes a copy of a final decree of divorce issued by a court in Florida on July 12, 1961, forever dissolving the marriage between claimant and his wife. As part of that decree, claimant's wife waived all her rights to any property interests she may have acquired under the laws of Cuba in consideration of receiving certain other property. Therefore on December 6, 1961, the date of loss, claimant's wife no longer owned any interest in the said property.

Claimant asserts a loss of \$13,716.00 based upon cost. A copy of the deed to the property indicates a purchase price of \$4,800.00. It further appears that claimant paid certain fees and other expenses in connection with the purchase aggregating \$2,000.00, and that he improved the land by the construction of a building at a cost of \$3,500.00, and the addition of roads and drainage at a cost of \$3,400.00.

On the basis of the entire record, the Commission finds that the 49.06 acres and the improvements thereon had a value of \$13,700.00 on December 6, 1961, the date of loss.

Lot 2, Block 3, Howard Subdivision

Based upon a copy of the original deed No. 216 of May 13, 1958, the Commission finds that claimant purchased certain land known as Lot 2, Block 3, Howard Subdivision on the Isle of Pines, Cuba, having an area of 927.96 square meters. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law

989, and that claimant's former wife owned no interest therein on the date of loss.

The record shows that claimant paid \$500.00 for the property, and that he incurred certain other expenses in connection with acquiring title to the property, as well as for filling in the property in order to grade it appropriately. Claimant's costs amounted to \$1,825.00.

The Commission finds that the value of the property on December 6, 1961, the date of loss, was \$1,825.00.

Lot 7, Block 3 and Lot 17, Block 5

Based upon a copy of the original deed No. 2 of January 13, 1960 and a copy of receipt for recording fees, the Commission finds that claimant purchased certain land on the Isle of Pines, Cuba, known as Lot 7, Block 3 and Lot 17, Block 5, located in the American Subdivision, having an area of 1,663 square meters. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, and that claimant's former wife owned no interest therein on the date of loss.

The record shows that claimant paid \$1,000.00 for the land and \$200.00 for fees and other expenses related to the purchase. Therefore the Commission finds that the value of the property on December 6, 1961, the date of loss, was \$1,200.00.

50 Acres, Cuchilla Alta

Based upon a copy of the original deed No. 238 of July 1, 1958, the Commission finds that claimant purchased certain land on the Isle of Pines, Cuba, known as Cuchilla Alta having an area of 49.6 acres. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989, and that claimant's former wife owned no interest therein on the date of loss.

It further appears from the evidence of record that claimant paid \$5,495.00 for the property, including fees and other related expenses. In addition, claimant improved the land by the construction of roads and

drainage at a cost of \$2,800.00. The Commission therefore finds that the value of the property on December 6, 1961, the date of loss, was \$8,295.00.

Lot 7, Block 9, Davis Ranches Grandes

Based upon the evidence of record, the Commission finds that claimant purchased in 1958 certain land known as Lot 7, Block 9, Davis Ranches Grande, on the Isle of Pines, Cuba, having an area of 2 1/2 acres. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, and that claimant's former wife owned no interest in the property on the date of loss.

Claimant asserts a loss of \$988.00 based upon his cost, which is established by the record. The Commission therefore finds that the value of the property on December 6, 1961, the date of loss, was \$988.00.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Davis Properties, Inc.	October 14, 1960	\$47,857.25
Davis Properties, Inc.	December 6, 1961	6,000.00
49 Acres of Land	December 6, 1961	13,700.00
Lot 2, Block 3	December 6, 1961	1,825.00
Lot 7, Block 3 and Lot 17, Block 5	December 6, 1961	1,200.00
49.6 Acres, Cuchilla Alta	December 6, 1961	8,295.00
Lot 7, Block 9	December 6, 1961	988.00
	Total	<u>\$79,865.25</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 14, 1960	\$47,857.25
December 6, 1961	32,008.00
Total	<u>\$79,865.25</u>

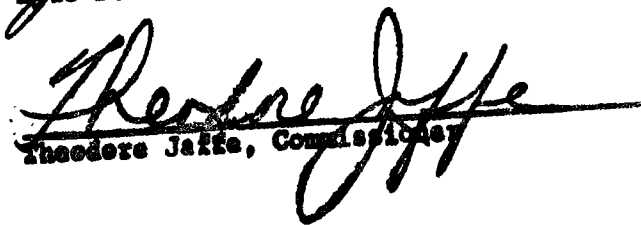
CERTIFICATION OF LOSS

The Commission certifies that MILTON H. DAVIS, JR. suffered a loss, as 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 seventy-Nine Thousand Eight Hundred Sixty-Five Dollars and Twenty-Five Cents (\$79,865.25) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JAN 6 1971


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 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. 31.5(e) and (g), as amended (1970).)