

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

IN THE MATTER OF THE CLAIM OF

HARRY WASSALL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0243

Decision No. CU 6019

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 \$185,245.00, was presented by HARRY WASSALL based upon the asserted loss of certain real and personal property in Cuba, including stock interests in Cuban corporations. 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:

6,316 shares of stock in Atesa Drilling Company (Atesa)	\$ 15,221.00
Debt due from Atesa	12,400.00
15,170 shares of stock in Poly- plasticos Industriales, S.A. (Polyplasticos)	15,170.00
10,000 shares of stock in Productos Plasticos de Espuma, S.A. (Plasticos)	20,000.00
3,733 shares of stock in Cia. Distribuidora de Productos Plasticos de Espuma, S.A. (Distribuidora)	3,733.00
4,000 shares of stock in Barrenas Mineras, S.A. (Barrenas)	4,000.00
1 share of stock in Inmobiliaria La Torre, S.A. (La Torre)	1,000.00
Land and building at Calle 218 No. 3114, Marianao, Havana, Cuba	92,084.00
Furniture and appliances at the house in Marianao	5,000.00
Automobile on the premises at Marianao	2,500.00
Equipment, furniture and air conditioners at office at Calle 21 No. 104, Vedado, Havana, Cuba	<u>14,137.00</u>
Total	<u>\$185,245.00</u>

Ownership

The record includes supporting evidence, discussed in detail below, which establishes that claimant acquired by purchase certain real and personal property in Cuba. Some of the stock certificates representing interests in the Cuban corporations in question were issued in the name of claimant's wife, a Cuban national. Others were issued in claimant's name. Claimant asserts that he was the sole owner of all of the properties claimed

herein, and that he caused some stock certificates to be issued in his wife's name in an effort to avoid confiscation by Cuba of American-owned property.

Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Inasmuch as it appears that all of the properties subject of this claim were acquired by purchase during coverture, the Commission finds that claimant owned a one-half interest therein.

No claim has been filed by or on behalf of claimant's wife, a nonnational of the United States and in any event such claim would be barred by the provisions of the Act.

All of the corporations in which stock interests are claimed were organized under the laws of Cuba. Thus, none qualifies 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.)

Atesa Drilling Company

On the basis of the evidence of record, including copies of stock certificates, the Commission finds that claimant owned a one-half interest in 6,316 shares of stock in Atesa Drilling Company. Atesa had been organized on November 21, 1958, and was engaged in contracting for the drilling of holes with diamond drilling equipment on behalf of the construction and mining industries.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized

Atesa Drilling Company. In the absence of evidence to the contrary, the Commission finds that Atesa was nationalized by the Government of Cuba on October 24, 1960.

Claimant asserts that the 6,316 shares of stock in Atesa had a value of \$15,221.00, based upon the book value thereof. The evidence includes a copy of the balance sheet and supporting schedules, as of August 31, 1960 for Atesa. That balance sheet shows the financial condition of Atesa as follows, the Cuban peso being on a par with the United States dollar:

ASSETS

Cash on hand and in bank		\$ 1,273.33
Accounts receivable - Government		29,424.79
Other receivables		1,975.23
Deposits		50.00
Drilling equipment	\$21,979.11	
Vehicles	4,776.00	
Furniture & fixtures	637.50	
	<u>\$27,392.61</u>	
Less depreciation	1,399.30	25,993.31
Bits and tubular and auxiliary equipment		29,909.24
Organization expense		<u>369.08</u>
Total Assets		<u>\$88,994.98</u>

LIABILITIES & CAPITAL

Accounts payable - trade		\$ 2,260.00
Other payables:		
Taxes	\$ 2,196.05	
Insurance	434.06	
Wages & salaries	<u>10,112.00</u>	12,742.11
Remigio Garcia		273.65
Harry Wassall		10,338.00
Agencia de Tractores y Equipos		10,180.57
Provision for income tax		<u>5,000.00</u>
Total Liabilities		\$40,794.33
Capital:		
20,000 issued shares at par value of \$1.00 per share	\$20,000.00	
Surplus	<u>28,200.65</u>	<u>48,200.65</u>
Total Liabilities & Capital		<u>\$88,994.98</u>

The Commission finds that the net worth of Atesa, or the excess of its assets over its liabilities, on October 24, 1960, the date of loss, was \$48,200.65. Since Atesa had 20,000 shares of outstanding capital stock,

each share had a value of \$2.41. Therefore, 6,316 shares had a value of \$15,221.56, and claimant's one-half interest therein had a value of \$7,610.78.

Debt Due From Atesa

The Commission has held that debts due from nationalized enterprises are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

As indicated by the balance sheet as of August 31, 1960, Atesa was indebted to claimant in the amount of \$10,338.00. It further appears from the accompanying schedules that Atesa also owed claimant unpaid salary in the amount of \$4,000.00, and that claimant was indebted to Atesa in the amount of \$1,937.90. Claimant states that no part of the net amount due him was ever paid to him.

On the basis of the evidence of record, the Commission finds that Atesa owed claimant a debt in the net amount of \$12,400.10. Therefore, claimant's one-half interest therein had a value of \$6,200.05.

Polyplasticos Industriales, S.A.

Based upon the evidence of record, including copies of stock certificates, the Commission finds that claimant owned a one-half interest in 15,170 shares of stock in Polyplasticos Industriales, S.A. which manufactured polyurethane foam rubber. The corporation started operations in mid-1960, and was nationalized on October 24, 1960 pursuant to Resolution 3 of Law 851.

Claimant asserts a loss of \$15,170.00 on the basis of the par value of the stock. It appears from claimant's statements that he had invested \$7,670.00 to acquire 7,670 shares of stock in Polyplasticos. In addition he performed services in organizing and advising the corporation for which his compensation was \$7,500.00, represented by 7,500 shares of stock. It appears that because Polyplasticos was nationalized shortly after its formation, no records are available to show its assets or liabilities, nor is there other evidence of record with the Commission as to the value of its stock.

While the amount invested by claimant has some probative value, it is insufficient in and of itself to establish the value of a stock interest in Polyplasticos on the date of loss. (See Claim of Lucia W. Mendoza, Claim No. CU-3219).

The Regulations 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) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to his stock interest in Polyplasticos in that the record fails to establish that Polyplasticos had any value on October 24, 1960. Accordingly, this portion of the claim is denied.

Productos Plasticos de Espuma, S.A.

Based upon the evidence of record, including copies of stock certificates, the Commission finds that claimant owned a one-half interest in 10,000 shares of stock in Productos Plasticos de Espuma, S.A. which was organized in December 1958 for the purpose of manufacturing expanded polystyrene for cold storage insulation and other purposes.

Claimant has submitted a copy of a letter, dated July 27, 1965, from the widow of a former agent of claimant in Cuba who reports that Plasticos was intervened by the Government of Cuba in 1961 and that in mid-1962 the company was "sold" to Cuba through a forced sale.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds, and other securities of persons who left Cuba. The Commission finds that this law in general applied to claimant who had left Cuba prior to that date and probably the claimant's stock interest in Plasticos 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].)

Claimant asserts a loss of \$20,000.00 on account of his interest in Plásticos. Claimant has stated that he had no information as to value since all of his files had remained in Cuba.

The Commission finds that claimant has also failed to sustain the burden of proof with respect to this portion of his claim in that the evidence does not establish what value, if any, Plásticos had on December 6, 1961, the probable date of loss. Accordingly, this portion of the claim is denied.

Cia. Distribuidora de Productos Plásticos de Espuma, S.A.

Claimant states that in 1960 a group in Cuba concluded that polystyrene would replace cork as a cold storage insulator. They therefore formed the Cuban corporation, Cia. Distribuidora de Productos Plásticos de Espuma, S.A., for the purpose of distributing the polystyrene manufactured by Plásticos. Claimant asserts that his interest was to be 3,733 shares of stock in Distribuidora with a par value of \$1.00 per share. He adds that he left Cuba before the stock certificates could be delivered to him. Claimant further asserts that Distribuidora was taken by Cuba at the same time as Plásticos. No further evidence has been submitted in support of this portion of the claim.

The Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of his claim in that the record does not establish he owned a stock interest in Distribuidora or if he did, that it had any value on December 6, 1961, the probable date of loss. Accordingly, this portion of the claim is also denied.

Barrenas Mineras, S.A.

Based upon the evidence of record, including copies of stock certificates, the Commission finds that claimant owned a one-half interest in 4,000 shares of stock in Barrenas Mineras, S.A.

The record includes an affidavit, dated September 10, 1965, from claimant's former attorney in Cuba from which it appears that Barrenas was organized early in 1960 for the purpose of producing diamond drilling bits for the

mining industry in Cuba. Barrenas shared the premises occupied by Atesa, (supra). While Barrenas was in the process of negotiating a contract with a United States company to commence production on a small scale, Atesa and Barrenas were nationalized by Cuba on October 24, 1960.

Claimant asserts a loss of \$4,000.00 based upon the par value of \$1.00 for each share of stock in Barrenas. The other two stockholders of Barrenas attest to the fact that the corporation had \$12,000.00 of paid-in capital, which had been used in part to organize the company, prepare equipment for recovery of diamonds, to perform experimental work in fabrication of diamond bits and for general expenses. About \$3,000.00 in cash was on deposit with a bank in Vedado, Havana, Cuba; and a license to import other equipment was pending when Cuba nationalized the corporation.

The Commission has had occasion to consider whether organization and other related expenses should be considered assets of a nationalized enterprise within the scope of Title V of the Act, and has held that if the earnings of the enterprise were sufficiently large in relation to the amount of such organization and related expenses, it could be found that such expenses enhanced the value of the enterprise and therefore constituted valuable assets of the enterprise. (See Claim of Albert J. Parreno, Claim No. CU-1231.)

In this case, however, the evidence shows that Barrenas had not yet commenced operations when it was taken by the Government of Cuba. Under such circumstances, there is no valid basis for finding that the organization and related expenses were valuable assets of Barrenas. The evidence establishes that Barrenas owned one asset, a bank account in the amount of \$3,000.00, and that it owed no debts on the date of loss.

The Commission therefore finds that the net worth of Barrenas on October 24, 1960, the date of loss, was \$3,000.00. Since Barrenas had 12,000 shares of outstanding capital stock, each share had a value of \$0.25. Therefore, 4,000 shares had a value of \$1,000.00, and claimant's one-half interest therein had a value of \$500.00.

Inmobiliaria La Torre, S.A.

Based upon the evidence of record, including a copy of a stock certificate, the Commission finds that claimant owned a one-half interest in one share of stock of Inmobiliaria La Torre, S.A. The Commission further finds that claimant's stock interest in La Torre was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, supra.

The Commission has held that the value of one share of stock in La Torre, which was in the nature of a membership certificate in a private club, had a value of \$1,000.00 on December 6, 1961, the date of loss. (See Claim of Robert M. Thomson, et ux., Claim No. CU-0679.)

Accordingly, the Commission finds that claimant's one-half interest in the La Torre stock had a value of \$500.00.

Land and Building

Based upon evidence of record, including affidavits from individuals having personal knowledge of the facts, as claimant's former attorney in Cuba, and claimant's former assistant in Cuba, the Commission finds that claimant acquired by deed, dated September 6, 1957, two adjoining lots in La Coronela, a suburb of Marianao, Havana, Cuba. Claimant caused a residence to be constructed on the land, which was completed on June 25, 1958. Pursuant to the community property laws of Cuba, claimant owned a one-half interest in this improved realty.

The evidence includes an affidavit of September 10, 1965 from claimant's assistant who supervised the construction of the residence and who attests that he was present at the end of January, 1961, when Cuban officials ordered that no one occupy the house. The officials took the keys and sealed the property.

On the basis of the foregoing evidence, the Commission finds that this improved real property was taken by the Government of Cuba on January 31, 1961.

Claimant asserts a loss of \$92,084.00 based upon the aggregate cost of the property as follows:

13,542 square varas of land, costing \$2.00 per square vara, the land being equivalent to 9,738 square meters	\$ 27,084.00
Residence and other improvements, costing	<u>80,000.00</u>
	\$107,084.00
Less outstanding mortgage	<u>15,000.00</u>
	<u>\$ 92,084.00</u>

Claimant's statements are supported by above-mentioned affidavits. In addition to the house, the grounds were improved by a swimming pool and landscaping. The evidence also includes photographs of the property and a detailed floor plan of the house.

Upon consideration of the entire record, the Commission finds that claimant's valuations are fair and reasonable. Accordingly, the Commission finds that the joint equity of claimant and his wife in the improved real property on January 31, 1961, the date of loss, was \$92,084.00. Therefore, claimant's one-half interest therein had a value of \$46,042.00.

Furniture and Appliances

The Commission finds on the basis of the evidence of record that claimant and his wife jointly owned furniture, appliances and other personal property, which they used to furnish their residence in Mariánao. The record shows that claimant was permitted to export to Puerto Rico in December 1960, 14 crates representing part of the personal belongings that were situated in the house.

The Commission finds that the balance of the personal property that remained in the residence was taken by the Government of Cuba on January 31, 1961 when the residence was taken.

The record includes a detailed list of the various items of personal property in the residence when it was taken by the Government of Cuba. This list sets forth the purchase prices of the properties and shows that after appropriate depreciation the net values of the properties aggregated \$5,005.00.

The Commission finds that these valuations are fair and reasonable and that the aggregate value of the personal properties was \$5,005.00 on January 31, 1961. Therefore, claimant's one-half interest therein had a value of \$2,502.50.

Automobile

The Commission finds that claimant and his wife jointly owned a 1957 Buick automobile with all available extra equipment which was maintained on the real property at Marianao, Havana, Cuba. On the basis of information supplied by claimant's former assistant, the Commission finds that the automobile was confiscated by Cuban Military Police in December 1960. In the absence of evidence to the contrary, the Commission finds that the taking occurred on December 15, 1960.

It has been stated that the automobile cost \$4,500.00 when new and its estimated value was said to have been between \$2,500.00 and \$3,000.00 on the date of loss. Claimant asserts that the automobile had a value of \$2,500.00.

The Commission finds that the automobile was subject to depreciation at the rate of 15% per year, and that it was 3 years old on the date of loss. Accordingly, the Commission finds that the value of the automobile on December 15, 1960 was \$2,475.00. Therefore, claimant's one-half interest therein had a value of \$1,237.50.

Equipment at Office

The record shows that claimant, a Consulting Geologist in Cuba, performed services for the petroleum and mining industries. In this connection claimant had acquired items of personal property, including geological apparatus and equipment as well as office furniture, and related equipment. The Commission finds on the basis of the community property laws of Cuba that claimant owned a one-half interest in said properties.

Claimant's office was located at 104-21 Street, Vedado, Havana, Cuba, where the offices of Atesa, Polyplasticos and Barrenas were situated. It

appears that said personal property was taken by the Government of Cuba when Atesa, Polyplasticos and Barrenas were nationalized. The Commission therefore finds that the items of personal property at claimant's office were taken by the Government of Cuba on October 24, 1960.

The evidence includes a certified list of the items of personal property which sets forth costs, appropriate depreciation and net values which aggregate \$14,137.50.

The Commission finds that these valuations are fair and reasonable. Accordingly, the Commission finds that the aggregate value of the various items of personal property at claimant's office was \$14,137.50 on October 24, 1960, the date of loss. Therefore, claimant's one-half interest therein had a value of \$7,068.75.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Atesa	October 24, 1960	\$ 7,610.78
Debt due from Atesa	October 24, 1960	6,200.05
Barrenas	October 24, 1960	500.00
La Torre	December 6, 1961	500.00
Land and building	January 31, 1961	46,042.00
Furniture and appliances	January 31, 1961	2,502.50
Automobile	December 15, 1960	1,237.50
Equipment at office	October 24, 1960	<u>7,608.75</u>
	Total	<u>\$72,201.58</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 24, 1960	\$21,919.58
December 15, 1960	1,237.50
January 31, 1961	48,544.50
December 6, 1961	<u>500.00</u>
Total	<u>\$72,201.58</u>

CERTIFICATION OF LOSS

The Commission certifies that HARRY WASSALL 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 Seventy-two Thousand Two Hundred One Dollars and Fifty-eight Cents (\$72,201.58) 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

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