

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

IN THE MATTER OF THE CLAIM OF

WILLIAM A. POWE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0502

Decision No. CU 4511

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 WILLIAM A. POWE, in the amended amount of \$9,924,315.30 based upon asserted losses in connection with ownership of stock in several nationalized Cuban corporations, liability as guarantor for unpaid debts of nationalized Cuban corporations, a debt of the Cuban Government, and a yacht. 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 has submitted evidence in the form of stock certificates, financial statements, lists of stockholders, inventories, maps, affidavits, correspondence, excerpts from the Cuban Official Gazette, and documents regarding the nationalization of enterprises and the appointment of administrators therefor. On the basis of such evidence the Commission makes its findings of fact regarding the various items of this claim under separate headings, as set forth further below.

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.

1. Willys Distributors, S.A.

Claimant asserts a loss of \$611,457.69 as the owner of a stock interest in this enterprise, which was incorporated in Cuba on July 18, 1945 and held the Cuban franchise for the sale of Jeeps and other vehicles manufactured by Willys Overland Motor Company of Ohio. The Commission finds that claimant was the owner of 4,963 shares of stock in the corporation, of a total of

8,532 shares outstanding, on October 24, 1960 when the enterprise was nationalized by the Government of Cuba under Resolution No. 3 issued pursuant to Law No. 851.

Claimant has submitted, as the most recent available financial statement of the corporation, a balance sheet as of June 30, 1959, which reflects the following:

<u>Assets</u>		
Cash on hand and in banks		\$ 55,780.64
Notes Receivable	\$ 55,031.53	
Less: Discounts	<u>2,857.14</u>	52,174.39
Accounts Receivable		
Clients	\$434,782.54	
Agencies	12,238.04	
Others	<u>32,579.41</u>	479,599.99
Inventory		348,879.66
Merchandise in Transit		<u>472,053.95</u> \$1,408,488.63
Piezas y Accesorios, K-W, Inc.		\$225,320.41
Sociedad Inmobiliaria Raritan		11,051.70
Kaiser Willys Motors of Cuba, Inc.		1,008.87
Importers of Jeeps, Inc.		2,056.53
Vehicle Assembly Co. ACEA, Inc.		4,809.42
Anglo-Cuban Distributors Co. ACO, Inc.		<u>41,062.68</u> 285,309.61
Properties		\$200,614.40
Less: Reserve for Depreciation		<u>68,578.40</u> 132,036.00
Investments		23,908.65
Items in Suspense		58.38
Deferred Assets		<u>10,510.53</u>
		<u>\$1,860,311.80</u>

Liabilities, Capital and Profits

Current Liabilities

The First National City Bank of New York	\$190,339.89	
Accounts Payable	141,784.33	
Willys Overland Export Corp.	267,186.08	
Vacation Tax Payable	4,749.66	
Taxes Payable	<u>24,037.23</u>	\$ 628,097.19
Talleres y Servicio, S.A.		15,455.51
Service Guaranteed Deposits		16,680.44
Mortgages Payable		10,000.00
Dividends Declared but not paid		85,320.00
Reserve for Contingencies		130,000.00
Provision for Profits Tax and Excess Profits Tax		<u>8,908.60</u>
		\$ 894,461.74

Capital:		
Authorized 20,000 shares of \$100 each		
Issued 8,537 shares	\$853,700.00	
In Treasury 5 shares	<u>500.00</u>	\$ 853,200.00
Surplus:		
Balance, July 1, 1958	\$183,097.83	
Less Dividends Declared but not paid		
Acta No. 67 of September 29, 1958	<u>85,320.00</u>	
	<u>97,777.83</u>	
Plus Net Profit, July 1, 1958 -		
June 30, 1959	<u>14,872.23</u>	<u>112,650.06</u>
		<u>\$1,860,311.80</u>

Deducting the liabilities from the assets as shown in the above balance sheet would indicate a net worth or book value of \$965,850.06. However, among the liabilities is an item designated as "Reserve for Contingencies" in the amount of \$130,000.00. Since this appears to be a cash reserve which would have been available for distribution among stockholders in the event of liquidation, it will be treated in the calculation of net worth as a part of the surplus. Therefore, the net worth or book value of the corporation is found to have been \$1,095,850.06.

The Commission finds that the book value as calculated is the most appropriate measure of the value of the corporation at the time of loss. With 8,532 shares of stock outstanding, the value of each share was \$128.44, and the value of claimant's 4,963 shares was \$637,447.72. The Commission concludes that by reason of his ownership interest in Willys Distributors, S.A., claimant suffered a loss in that amount on October 24, 1960 when the corporation was nationalized by the Government of Cuba, within the meaning of Title V of the Act.

Claimant suffered an additional loss for his share of the unpaid dividends of \$85,320.00 which had been declared, as set forth in the balance sheet. Claimant's share, in the amount of \$49,630.00, constituted a debt owed to claimant by a nationalized enterprise and represents an additional loss suffered by claimant on October 24, 1960 within the meaning of Title V of the Act, making a total loss for claimant of \$687,077.72.

2. Piezas y Accesorios, K-W, S.A.

The claimed loss with respect to the enterprise Piezas y Accesorios, K-W, S.A., which sold parts and accessories for vehicles sold by Willys Distributors, Inc., is \$176,260.01. The Commission finds that this corporation was nationalized by the Government of Cuba on October 24, 1960 under Resolution No. 3 issued pursuant to Law No. 851, at which time it had 2,205 shares of stock outstanding and claimant owned 1,281 shares. Claimant has submitted corporation's balance sheet as of June 30, 1959, the most recent available, reproduced below:

<u>Assets</u>		
Cash on hand and in banks		\$ 48,656.23
Merchandise sold but not collected for		5,419.22
Accounts Receivable		
Clients in Havana	\$64,834.64	
Clients in Camaguey	9,283.21	
Agents	42,254.31	
Others	<u>15,484.87</u>	131,857.03
Inventory		331,326.13
Merchandise in Transit		<u>25,588.84</u> \$542,847.45
Talleres y Servicio, S.A.		\$ 26,878.56
Motores Kaiser Willys de Cuba, S.A.		2,000.00
Cia. Distribuidora Anglo-Cubana Aco., S.A.		<u>157.50</u> 29,036.06
Real Estate		\$ 12,158.95
Less: Reserve for Depreciation		<u>4,208.91</u> 7,950.04
Investments		100.00
Organization Expense		1,907.90
Deferred Assets		315.73
Time Payments		<u>196.95</u>
		<u>\$582,354.13</u>

Liabilities, Capital and Surplus

Current Liabilities		
Willys Overland Export Corp.	\$ 19,884.43	
Accounts Payable	13,508.58	
Vacation Tax	1,701.25	
Other Taxes Payable	6,792.13	
Commissions Payable	<u>214.47</u>	\$ 42,100.86
Willys Distributors, S.A.	\$225,320.41	
Sociedad Inmobiliaria Raritan	<u>6,354.34</u>	231,674.75
Dividends Declared but not paid		22,050.00
Provision for Profits Tax		<u>5,180.14</u>
		<u>\$301,005.75</u>

Capital: 2,205 shares of \$100 par value issued		\$220,500.00
Surplus:		
Balance July 1, 1957	\$ 59,552.40	
Less Dividends Declared	<u>22,050.00</u>	
	37,502.40	
Plus Net Profit July 1, 1958 to June 30, 1959	<u>23,345.98</u>	<u>60,848.38</u>
		<u>\$582,354.13</u>

The balance sheet reflects a net worth of \$281,348.38. However, the assets include an item of \$1,907.90 for "Organization Expense". This corporation was organized shortly after the organization of Willys Distributors, Inc. on July 18, 1945. In view of the amount of declared dividends, the surplus carried over from prior years, and the profit made in the year ending June 30, 1950, it would appear that the expenses of organization should have been written off completely by October, 1960. Accordingly, the amount of \$1,907.90 will be considered an item of expense rather than an asset, reducing the net worth of the enterprise to \$279,440.48.

From the evidence of record, the Commission finds the book value as thus calculated to be the most appropriate measure of the value of the corporation at the time of loss. Therefore, the value at the time of loss for each of the 2,205 shares of outstanding capital stock was \$126.73 and the value of claimant's interest based upon his ownership of 1,281 shares was \$162,341.13. The Commission concludes that claimant suffered a loss in that amount on October 24, 1960 when the corporation was nationalized by the Government of Cuba, within the meaning of Title V of the Act.

As in the previous instance, claimant suffered an additional loss for dividends declared but not paid. The amount of dividends declared was \$10.00 per share and as the owner of 1,281 shares, claimant was owed \$12,810.00. This represents a debt of a nationalized enterprise and an additional loss suffered by claimant on October 24, 1960 within the meaning of Title V of the Act, and making a total loss for this enterprise in the amount of \$175,151.13.

3. Sociedad Inmobiliaria Raritan

Claimant asserts a loss in the amount of \$431,213.19 for his ownership interest in Sociedad Inmobiliaria Raritan, a Cuban corporation organized in 1945. The Commission finds that claimant owned 1,023 of the 1,310 shares of stock outstanding of this corporation on September 13, 1961 when it was nationalized by the Government of Cuba under Law 890. Claimant has submitted a balance sheet as of December 31, 1959, the most recent available, which reflects the following:

<u>Assets</u>			
Current Assets			
Cash in Banks	\$	585.18	
Rents Receivable		21,140.00	
Other Accounts Receivable		871.34	
Guaranty Deposits		<u>450.00</u>	\$ 23,046.52
Fixed Assets			
Land Properties	\$	132,623.38	
Buildings less accrued reserve of \$56,587.58		133,518.63	
Furniture and Fixtures less reserve of \$1,974.34		<u>1.00</u>	266,143.01
Deferred Charges			
Insurance paid in advance	\$	844.92	
Taxes paid in advance		<u>310.51</u>	<u>1,155.43</u>
			<u>\$290,344.96</u>
<u>Liabilities</u>			
Current Liabilities			
Accounts Payable	\$	4,796.26	
Accrued Taxes Payable		<u>10,910.39</u>	\$ 15,706.65
Capital:			
Authorized Capital \$500,000.00			
Capital Issued	\$	149,800.00	
Less: Shares held on hand which have not been paid		<u>18,800.00</u>	131,000.00
Surplus:			
Net Surplus as of December 31, 1959			<u>143,638.31</u>
			<u>\$290,344.96</u>

The net worth of the enterprise as calculated from this balance sheet would be \$274,638.31. Claimant contends, however, that the fixed assets,

reported at cost less depreciation, are greatly undervalued in the balance sheet. The principal assets of the corporation were two commercial buildings, one located at 23rd and O Streets in the Vedado section of Havana, and the other near the Cabaret Sans Souci in the suburban section of Marianao. The area of the land at 23rd and O Streets is 2,964.75 square meters. In an affidavit, claimant states that on the basis of his knowledge of the value of real estate in the vicinity, this land was worth \$100.00 per square meter in 1959. Claimant's legal counsel in Cuba states in an affidavit that he was familiar with the property and has direct knowledge of other real estate transactions in that neighborhood, and values the land at \$100.00 per square meter. In view of this evidence and considering the location of the property (less than one block from the Hotel Nacional), the Commission finds that the value of the land at 23rd and O Streets was \$296,475.00. In their affidavits, claimant and his Cuban counsel value the other land in Marianao, which measured 7,500 square meters, at \$15.00 per square meter. This amount appearing reasonable in view of the location and other evidence available to the Commission concerning land values in the vicinity, the Commission finds that the land in Marianao was worth \$112,500.00, for a total value for the land properties of \$408,975.00.

Claimant also includes a value of \$1,500.00 for furniture and fixtures in his calculation of the value of the corporation, but submits no evidence in support thereof. The data submitted by claimant supporting the balance sheet of December 31, 1959 includes Exhibit 31A7, which contains the statement - "At present the Company does not have any furniture." Accordingly, no change is made in the balance sheet figure in this respect. No claim is made for a valuation for the buildings higher than that shown on the balance sheet.

Having found that the land owned by the corporation was worth a total of \$408,975.00, an increase of \$276,351.62 over the balance sheet figure, the Commission finds that the value of this corporation at the time of taking was \$550,989.93, or \$420.603 per share of the 1,310 shares of stock outstanding, and that the value of claimant's 1,023 shares was \$430,276.87.

The Commission concludes that claimant suffered a loss in that amount on September 13, 1961 within the meaning of Title V of the Act.

4. Powe Machinery Company, S.A.

The Commission finds that claimant was the owner of 2,432 shares of 2,500 outstanding shares of stock in this corporation which represented Caterpillar Tractor Company, Deere & Company, and other American manufacturers in the western half of Cuba. The enterprise was organized in Cuba and was nationalized by the Government of Cuba under Resolution No. 3 issued pursuant to Law No. 851 on October 24, 1960. A loss in the amount of \$3,544,323.84 is asserted and in support thereof, a certified balance sheet as of June 30, 1960 was submitted which reflects the following:

Assets

Current Assets

Cash (including bank deposit to guarantee Letters of Credit \$83,265.00)	\$ 378,895.20	
Notes and Accounts Receivable Customers (less allowance of \$50,000.00 for doubtful accounts)	1,283,632.64	
Commissions Receivable on direct sales	30,327.82	
Officers and Employees	26,157.64	
Other	16,112.25	
Due from Powe Equipment Co., S.A.	12,240.40	
Inventories, at Cost or Less, not in excess of market		
General Merchandise	332,267.12	
Spare Parts	361,525.78	
In Transit	<u>5,612.27</u>	\$2,446,771.12
Loans Receivable from Contratos Mobiliarios Cremo, S.A. - 7% Unsecured - Due 2/20/65		173,000.00
Capital Assets, at Cost		
Land and Buildings	\$ 581,533.93	
Furniture & Fixtures & Other Equipment	<u>235,482.07</u>	
	871,016.00	
Less Accumulated Depreciation	<u>82,196.60</u>	734,819.40
Other Assets & Deferred Charges		
Receivable from Sociedad de Inversiones La Loma	\$ 80,692.71	
Prepaid Insurance	7,898.11	
Advances to Employees for Expenses	2,734.46	
Miscellaneous	<u>12,845.45</u>	<u>104,170.73</u>
		<u>\$3,458,761.25</u>

Liabilities and Capital

Current Liabilities			
Accounts Payable	\$	16,647.86	
Officers & Employees		21,023.91	
Customers' Credit Balances		17,609.27	
Other		<u>59,664.04</u>	\$ 114,945.08
Accrued Liabilities			62,782.28
Accrued Taxes			9,904.77
Long Term Debt, Installments due within one year			36,000.00
Long Term Debt - 6% First Mortgage	\$	250,000.00	
Less Installments due within one year		<u>36,000.00</u>	214,000.00
Deferred Gross Profit on Installment Accounts			<u>54,498.06</u>
			\$ 492,130.19
Capital Stock and Surplus			
Authorized, 4,500 shares of \$1,000 par value each; Issued and Outstanding, 2,500 shares		\$2,500,000.00	
Earned Surplus		<u>466,631.06</u>	<u>2,966,631.06</u>
			<u>\$3,458,761.25</u>

Claimant urges an upward adjustment of the Earned Surplus figure on the ground that during the year ending June 30, 1960 the accounts receivable total had been reduced by \$560,086.25 which was written off as bad debts. In an affidavit, claimant explains that this charge-off would not normally have been made, but was done to reduce exorbitant taxes imposed by the Cuban Government, and because the debtors were enterprises which recently had been nationalized; and the company did not wish to pay taxes on money which was owed to it by the Government of Cuba. From a detailed profit and loss statement for the year ending June 30, 1960, it is apparent that the surplus balance at the beginning of that period was \$694,217.60; that operations for the year resulted in a net loss of \$227,586.54, which reduced the surplus to the \$466,631.06 shown on the balance sheet; and that the reason for the net loss was the writing off of \$560,086.55 as bad debts, without which the year's operations would have shown a net profit of \$332,500.01, increasing the surplus account to \$1,026,717.61.

In addition, the record includes an unaudited balance sheet as of August 31, 1960, which was delivered by an officer of the company to the American Embassy in Havana when nationalization appeared imminent. The only significant difference in the two balance sheets is the addition of \$116,704.68 to the July 1, 1960 earned surplus balance of \$466,631.06, increasing the surplus to \$583,335.74. This increase represented profits earned during the months of July and August 1960, and is supported by a detailed profit and loss statement for that period.

The Commission is of the opinion that the surplus account should be increased to \$1,143,422.29, in view of the debt write-off and the profits for July and August of 1960. On the other hand, a downward adjustment will be made in one of the asset items. The June 30, 1960 balance sheet shows the sum of \$12,240.40 due from the Powe Equipment Company, S.A. A balance sheet of the same date for Powe Equipment Company (discussed below) shows as a liability the sum of \$10,719.05 owed to Powe Machinery Company, S.A. Claimant being unable to reconcile the difference, the Commission will substitute the smaller figure in the balance sheet of Powe Machinery Company for June 30, 1960, reducing the asset total by \$1,521.35. This reduces the surplus account to \$1,141,900.94 and provides a total net worth of \$3,641,900.94, which the Commission determines to have been the value of the corporation at the time of loss. The value for each share of the 2,500 shares outstanding was therefore \$1,456.76, and the value of claimant's 2,432 shares was \$3,542,840.32. The Commission concludes that claimant suffered a loss in that amount as a result of the nationalization of the corporation by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act.

5. Powe Equipment Company, S.A.

This company was the counterpart of the Powe Machinery Company, S.A. and represented Caterpillar Tractor Company, Deere & Company and other American manufacturers in the eastern half of Cuba. The Commission finds that this corporation was nationalized by the Government of Cuba on October 24, 1960 under Resolution No. 3 pursuant to Law No. 851. Claimant asserts a loss

in the amount of \$2,658,036.69 based upon his ownership of 1,394 shares of the 1,450 shares of stock outstanding.

Claimant has submitted a certified balance sheet for the corporation as of June 30, 1960 which shows an asset total (including \$6,863.64 for Unamortized Organization Expense) of \$2,854,274.56, a liability total of \$276,892.76, and a net worth of \$2,577,381.80 (capital stock \$1,450,000.00, and surplus \$1,127,381.80, including \$200,000.00 designated as Reserve for Contingencies). In his evaluation of the corporation, claimant relies upon a document dated November 2, 1960, executed when the administrator designated by the Cuban Government took control of the enterprise. According to this document, the firm had an authorized capital of \$4,500,000.00 (with \$3,050,000.00 not issued), current assets of \$2,406,698.40, fixed assets of \$497,774.86, other assets of \$205,528.54, total assets of \$3,110,002.00, liabilities of \$345,186.39, a surplus of \$1,314,815.81 and a liquid capital of \$2,764,815.81. The document further reveals that the outgoing administrator declared the latest balance sheet to be dated September 30, 1960 and to reflect the situation as of October 25, 1960 when the records and files were sealed and the doors of the building sealed to await the appointment of a new administrator.

Material made available to the Commission from the files of the Department of State includes a balance sheet for Powe Equipment Company, S.A. as of September 30, 1960, as follows:

		<u>Assets</u>
<u>Current Assets:</u>		
Cash		\$369,695.72
Accounts Receivable, Customers	\$356,356.70	
Less: Reserve for doubtful accounts	<u>50,000.00</u>	306,356.70
Notes Receivable		231,274.44
Other Receivable:		
Commissions Receivable	\$180,959.23	
Others	<u>15,696.64</u>	196,655.97
Foreign Suppliers Debit Balance		92.93
Officers and Employees' Debit Balances		67,843.91

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Inventories:			
Machinery	\$434,805.11		
Parts	<u>535,391.56</u>	\$970,196.67	
Merchandise in Transit		8,643.74	
Foreign Suppliers			
Purchase Agreement		36,690.82	
Merchandise Purchase			
Orders Guarantees		100,810.81	
Banks Guaranty Deposits		100,661.63	
Work in Process		1,709.47	
Advanced Custom Duties		985.02	
Miscellaneous Prepaid		<u>15,080.67</u>	\$2,406,698.40

<u>Fixed Assets:</u>	<u>Original Value</u>	<u>Depreciation Accrued</u>	<u>Book Value</u>	
Land	\$ 77,202.30	\$ -	\$ 77,202.30	
Buildings	288,231.20	2,161.71	286,069.49	
Furniture and Fixtures	108,233.11	40,514.53	67,718.58	
Automobile and Trucks	27,932.22	20,013.45	7,918.77	
Shop Equipment	54,662.07	13,216.71	41,445.36	
Tools	3,342.64	-	3,342.64	
	<u>\$559,603.54</u>	<u>\$ 75,906.40</u>	<u>\$483,697.14</u>	
Patents	20,000.00	5,922.28	14,077.72	497,774.86

Other Assets:

Guaranty Deposits		\$ 1,050.00	
Cash Surrender Value of Life Insurance		2,420.00	
Contratos Mobiliarios Cremo, S.A.		<u>195,000.00</u>	198,470.00

Deferred Charges:

Organization Expenses		\$ 6,618.51	
Traveling Expense Advances		<u>440.43</u>	<u>7,058.94</u>
			<u>\$3,110,002.20</u>

Liabilities

Current Liabilities:

Accounts Payable:			
Foreign Suppliers	\$ 23,667.17		
Local Suppliers	<u>2,154.33</u>	\$ 25,821.50	
Notes Payable:			
Promissory Notes	\$ 36,690.82		
Credit Letters	<u>100,810.81</u>	137,501.63	
Other Payable:			
Powe Machinery Co., S.A. Current Account	\$ 15,657.95		
Others	<u>6,166.23</u>	21,824.18	
Customers' Credit Balances		20,886.52	
Officers and Employees' Credit Balances		9,200.12	
Accrued Taxes, Insurance, Commissions and others		43,743.63	
Profit Tax		<u>39,903.03</u>	\$ 298,880.61

Deferred Credits:

Gross Profits Deferred on Installment Sales \$ 46,305.78

Capital Stock and Surplus:

Capital Stock:

Authorized 4,500 shares of \$1,000 par value	\$4,500,000.00	
Less: Not Issued	<u>3,050,000.00</u>	\$1,450,000.00

Surplus:

Reserve for Contingencies		200,000.00	
Earned Surplus Balance			
July 1, 1960	\$ 927,381.80		
Profit up to			
September 1, 1960	<u>187,434.01</u>	<u>1,114,815.81</u>	<u>2,764,815.81</u>
			<u>\$3,110,002.20</u>

It will be noted that the balance sheet of September 30, 1960 is in agreement with the document of November 2, 1960 submitted by claimant except for an apparent typographical error in the latter for "other assets" (\$205,528.54 instead of \$205,528.94), and an arithmetical error in the November document's totalling of assets. With corrections for these items, both documents indicate a net worth for the corporation of \$2,764,815.81. The sum of \$6,618.51 for Organization Expenses, however, is included among the assets in the balance sheet of September 30, 1960. The corporation was organized on December 12, 1951 and the Commission is of the opinion that the expenses of organization should have been written off by September 30, 1960, in view of the profit, earned surplus, and reserve for contingencies items in the balance sheets. Accordingly, the amount of \$6,618.51 will be considered as an item of expense rather than an asset, reducing the net worth to \$2,758,197.30.

The Commission finds that the value of the corporation at the time of loss was \$2,758,197.30 or \$1,902.205 for each of the 1,450 shares of stock outstanding. The Commission concludes that claimant, as the owner of 1,394 shares of this stock, suffered a loss in the amount of \$2,651,673.77 on October 24, 1960 as a result of the taking of the corporation by the Government of Cuba, within the meaning of the Act.

6. Pioneer Trading, S.A.

The Commission finds that this corporation was organized on October 31, 1958 for the purpose of acquiring from Powe Equipment Company, S.A. used equipment, which had been traded in for new equipment, and repairing and reselling such equipment. The authorized capital was \$1,000,000.00 in 10,000 shares of \$100.00 each, but only 1,000 shares were issued. Claimant was the owner of 985 shares which he purchased for \$98,500.00. The sum of \$100,000.00 received from the sale of the stock was deposited in Banco Continental Cubana to the account of Pioneer Trading, S.A.

Because of the political climate, the enterprise did not commence operations and no part of the bank deposit was used or withdrawn. On February 23, 1961, the enterprise was intervened by Resolution No. 61-262 of the National Institute of Agrarian Reform, and the appointed Intervenor notified Banco Continental Cubana and took over the \$100,000.00 deposit.

The Commission finds that the value of claimant's interest in the corporation was \$98,500.00 and concludes that he suffered a loss in that amount upon the intervention of the firm by the Government of Cuba on February 23, 1961, within the meaning of Title V of the Act.

7. Cuban American Metals Distributors, Inc.

The Commission finds that this corporation, organized on March 24, 1950 for the purpose of selling the products of the Aluminum Company of America in Cuba, was intervened by the Government of Cuba on August 16, 1960. Claimant asserts a loss in the amount of \$55,943.16 based upon his ownership of 188 shares of the 1,881 outstanding shares of that enterprise.

The record for this enterprise contains material submitted by claimant and files made available to the Commission by the Department of State. The amount of loss asserted by claimant herein is based upon statements by the Chairman of the Board and the Vice-President of the firm who base their assessments upon the total assets including an amount for good will and for profit which the future sale of the inventory would have produced. Balance

sheets for the corporation as of December 31, 1959, June 30, 1960 and July 30, 1960 do not contain any entry for good will or prospective profits.

Included in the material from the Department of State files in addition to the balance sheets for June 30, 1960 and July 30, 1960 are a physical inventory of the company's assets made at the time of intervention and a statement of the contents of the company's safe deposit box when opened by the Intervenor. The inventory showed total assets of \$309,915.61, compared to \$381,571.91 and \$304,773.95, the total assets in the June 30, 1960 and July 30, 1960 balance sheets, respectively.

Upon consideration of the entire record, the Commission finds that the most appropriate measure of the value of the corporation at the time of intervention is the asset total of \$309,915.61 taken from the inventory made at the time of intervention, minus the liabilities of \$82,961.45 shown on the latest balance sheet. Thus the net worth is \$226,954.16 or \$120.656 for each of the 1,881 outstanding shares of stock. The Commission concludes that claimant, as the owner of 183 shares of such stock, suffered a loss in the amount of \$22,683.33 on August 16, 1960 as a result of the intervention of the enterprise by the Government of Cuba, within the meaning of Title V of the Act.

The Commission further finds that the company was indebted to claimant in the amount of \$4,504.36 for dividends declared but unpaid since the uncanceled check for this amount was among the contents of the safe deposit box taken by the Intervenor. The Commission concludes that claimant suffered an additional loss in the amount of \$4,504.36 on August 16, 1960, making a total loss of \$27,187.69 resulting from the intervention of this enterprise.

8. Contratos Mobiliarios Cremp, S.A.

The Commission finds that this corporation, which was solely owned by claimant, was organized in December, 1959 to purchase the accounts receivable of another firm and to collect said accounts. Although no evidence has been submitted of action taken by the Government of Cuba with respect to this corporation on a specific date or under a specific law, the record indicates

that it was taken about the end of the year 1962. In the absence of evidence to the contrary, the Commission finds that the corporation was taken by the Government of Cuba on December 15, 1962.

As evidence of the value of the enterprise, claimant has submitted a financial statement showing that as of September 30, 1962, the assets of the firm consisted of \$12,176.11 in a bank account and \$455,624.30 in accounts receivable, for a total of \$467,800.41. No liabilities are shown. However, to finance the purchase of the accounts receivable, Contratos Mobiliarios Cremo, S.A. had borrowed money from other enterprises in which claimant had an interest. The balance sheet for Powe Equipment Company, S.A. as of September 30, 1960 reveals that it was owed \$195,000.00 by the subject corporation on that date. The balance sheet of June 30, 1960 for the Powe Machinery Company, S.A. also includes an indebtedness of \$173,000.00 owed by this company, and there is no evidence of any subsequent reduction of the amounts owed.

On the basis of all the evidence of record, the Commission finds that the value of Contratos Mobiliarios Cremo, S.A. on the date of loss was \$99,800.41 (\$467,800.41 minus \$195,000.00 and \$173,000.00); and concludes that claimant suffered a loss in that amount on December 15, 1962 within the meaning of Title V of the Act.

9. Sociedad de Inversiones La Loma, S.A.

The Commission finds that claimant was the sole owner of this corporation which was organized in Cuba on October 8, 1950 for the purpose of acquiring title to lands owned by claimant. No evidence has been submitted to establish specific action by the Government of Cuba concerning this corporation, but the record indicates that certain properties owned by the corporation were nationalized with the properties of Powe Equipment Company, S.A. and Powe Machinery Company, S.A. on October 24, 1960. In the absence of evidence to the contrary, the Commission finds that the corporation was taken by the Government of Cuba on October 24, 1960.

Claimant asserts a loss in the amount of \$1,291,118.47 and in support thereof has submitted a financial statement as of September 30, 1960 and supplementing affidavits by the president of Powe Machinery Company, S.A. and three Cuban attorneys. The financial statement lists only assets of the corporation asserting that no liabilities existed since it operated as a land holding company. The statement did not include, however, the value of a stock interest in another real estate corporation which interest was valued by the Cuban secretary of that corporation at \$375,000.00. Furthermore, the balance sheet of June 30, 1960 for the Powe Machinery Company, S.A. has an asset entry for a loan due from Sociedad de Inversiones La Loma, S.A. in the amount of \$80,692.71.

Accordingly, the Commission determines the assets and liabilities of Sociedad de Inversiones La Loma, S.A. as of October 24, 1960 to be the following:

<u>Assets</u>	
Cash	
On Hand	\$300,066.00
In First National City Bank of New York	<u>71,577.21</u> \$ 371,643.21
Properties	
Lots, estancia La Loma, Havana	\$ 43,225.18
Lots, estancia San Martin, Havana	142,020.99
Alamar and Alturas del Olimpo lots	66,021.34
Lot, City of Santa Clara	<u>24,068.45</u> 275,335.96
Investments	
5 Shares Inversiones Mouruso, S.A.	\$ 5,000.00
4,375 Shares Territorial Alturas del Olimpo, S.A.	<u>375,000.00</u> 380,000.00
Mortgages to be Collected	
Powe Machinery Company, S.A.	\$144,000.00
Inversiones Mouruso, S.A.	<u>105,139.30</u> 249,139.30
Loans to be Collected	<u>15,000.00</u>
Total Assets	<u>\$1,291,118.47</u>
<u>Liabilities</u>	
Loan from Powe Machinery Company, S.A.	\$ <u>80,692.71</u>

The net worth of the corporation, therefore, is \$1,210,425.76. The Commission concludes that claimant suffered a loss in that amount on October 24, 1960 within the meaning of Title V of the Act.

10. Compania Inmobiliaria El Mamey, S.A.

The Commission finds that claimant was the sole owner of all the shares of Compania Inmobiliaria El Mamey, S.A. which was organized in Cuba on July 19, 1957 for the purpose of holding title to farm property previously held by claimant. The only asset of this company was a tract of land of 100,607 square meters located near the intersection of Via Blanca and Carretera Central Highways in Cojimar, Guanabacoa, Province of Havana, Cuba, in an area where subdivisions were being built. No evidence has been submitted of specific action taken by the Government of Cuba concerning this corporation and claimant has filed an affidavit by a Cuban attorney that its property was nationalized about the years 1960 and 1961. In the absence of evidence to the contrary, the Commission finds that the corporation was nationalized by the Government of Cuba on October 24, 1960 when claimant's major corporate interests were nationalized.

Although claimant states the land was worth more, the amount claimed is the purchase price in 1957 of \$300,000.00. This value is also the value stated in documents deposited with the American Embassy in Havana in 1960. The Commission therefore determines the value of this corporation at the time of loss as \$300,000.00 and concludes that claimant suffered a loss in that amount on October 24, 1960 within the meaning of Title V of the Act.

11. Compania Petrolera Arabia, S.A.

The Commission finds that claimant was the owner of 10 shares of the 600 shares outstanding of Compania Petrolera Arabia, S.A., a Cuban corporation organized on October 26, 1948. The company was the owner of an oil concession known as Tirana, covering 2,200 hectares of land located in Matanzas Province, Cuba which was leased jointly to Compania Petrolera Norita, S.A. and Esso Standard (Cuba) Inc. By the terms of the lease Compania Petrolera Arabia, S.A. was to share in an annual rent of \$25,000.00,

its share approximating \$1,000.00, and to receive a royalty of 5% of production. There is no evidence to establish that explorations were made or oil extracted in the leased area.

The rights of the corporation in the property which it controlled were substantially curtailed by the Cuban Government under Law No. 635 of November 23, 1959. This law effectively cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.) Thus the Commission finds that the property of the corporation was taken by the Government of Cuba on November 23, 1959.

Claimant asserts a loss in the amount of \$833.30 for his 10 shares and in support of this has submitted the affidavit of the corporation's president. On the basis of the affidavit and other evidence available to the Commission, it is determined that the company had a value of \$50,000.00 on November 23, 1959 and the Commission concludes that claimant suffered a loss in the amount of \$833.30 for his ownership interest on that date as a result of the actions of the Government of Cuba, within the meaning of Title V of the Act.

12. Payments to Caterpillar Americas Company

Powe Machinery Company, S.A. and Powe Equipment Company, S.A. were the Cuban representatives for Caterpillar Americas Company although the franchise for Cuba was in claimant's name. Payment for merchandise shipped to Cuba was guaranteed by claimant. As a result, when two sight drafts in the amount of \$45,807.15 and \$44,960.82 due December 1, 1959 and December 7, 1959, respectively, were paid to the collecting bank, the Royal Bank of Canada, by the consignee but no amount was forwarded to the consignor, payment of the past due sums was made to the consignor by the claimant on March 13, 1961. Claimant, therefore, asserts claim herein for the amount of \$90,767.97 which he acquired by subrogation.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds to creditors abroad by numerous, unreasonable

and costly demands upon the consignees. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein and the subrogor, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of claimant and the subrogor, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, the Commission finds that claimant, as subrogee, succeeded to and suffered a loss in the amount of \$90,767.97 on March 13, 1961 within the meaning of Title V of the Act. The Commission has held that with respect to an assignment of a claim the date of assignment shall be used for the purpose of computing interest. (See Claim of Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

13. Payments to Deere & Company and John Deere Intercontinental, S.A.

Claimant asserts a loss of \$55,180.53 for payments made to Deere & Company and its subsidiary John Deere Intercontinental, S.A. on behalf of Cuban corporations for merchandise shipped to Cuba. Cuban corporations controlled by claimant held Cuban franchises for products of Deere & Company, and payment for shipments of merchandise to these corporations was guaranteed by claimant. It is asserted that shipments were made to Cuba and payment made on drafts for the shipments to Cuban collecting banks but no funds were remitted to the consignor.

There is no evidence of drafts issued or paid for Deere equipment in the record. However, an affidavit of the Credit Manager of John Deere Intercontinental, S.A. established that claimant as guarantor made payments for the Cuban enterprises to John Deere Intercontinental, S.A. of \$46,737.14, to Deere & Company of \$3,633.61, and to the Export-Import Bank of Washington of \$4,809.78. The payments to the Export-Import Bank, however, were for notes which were paid by claimant on March 19, 1962 and which will be discussed below with other payments to that bank.

The Commission finds that claimant acquired a claim in the amount of \$50,370.75 by subrogation as a result of his payment of the debts of nationalized Cuban enterprises which payments were determined to have been made by him on March 19, 1962 in the absence of evidence to the contrary.

Accordingly, the Commission finds that claimant, as subrogee, succeeded to and suffered a loss in the amount of \$50,370.75 on March 19, 1962 within the meaning of Title V of the Act. Again interest will be computed from the date of the assignment of this claim to claimant.

14. Payments to Export-Import Bank of Washington

Claim is made for the sum of \$8,460.42 paid by claimant to the Export-Import Bank of Washington for the account of Powe Machinery Company, S.A. on notes held by that bank. The record reflects and the Commission finds that claimant made payment on March 19, 1962 of \$4,809.78 and on July 5, 1962 of \$3,650.64 on notes due and owing by the Powe Machinery Company, S.A. which had been nationalized by the Government of Cuba on October 24, 1960. The notes were originally payable to John Deere Intercontinental, S.A. and Caterpillar Americas Company and subsequently endorsed over to the bank. Thus the Commission finds that the amount of \$8,460.42 was a debt of a nationalized enterprise to which claimant became subrogated by his payments of March 19, 1962 and July 5, 1962.

Accordingly, the Commission finds that claimant succeeded to and suffered losses in the amounts of \$4,809.78 and \$3,650.64 on March 19, 1962 and July 5, 1962, respectively, within the meaning of Title V of the Act.

15. Commission on Sale for John Deere Intercontinental, S.A.

Claim is made for the amount of \$122,419.62 due from the Government of Cuba for a sales commission on equipment sold to the Cuban Government for which a promissory note signed by Fidel Castro was given. The Commission has previously determined the Claim of Deere & Company, Claim No. CU-2392 wherein a certification of loss was made to the company based upon the note dated May 1, 1960 which matured May 1, 1961. The note was in the face amount

of \$339,591.12 and the share of loss for Deere & Company was held to be \$267,171.50, the balance representing the sales commission due claimant herein.

Thus the Commission reaffirms its previous decision holding the failure of the Government of Cuba to pay the promissory note on its maturity date, May 1, 1961, constituted a taking of claimant's property. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$122,419.62 within the meaning of Title V of the Act on May 1, 1961.

16. Chriscraft Yacht

The Commission finds that claimant was the owner of a 75% interest in a Chriscraft yacht for which claim is made in the amount of \$12,000.00. The record contains an affidavit of Mr. Waller Barrett affirming his sale to claimant of a 75% interest in a thirty-nine foot Chriscraft Cabin Cruiser for \$12,000.00 during the year 1957, and that the cruiser was subsequently taken to Cuba where it was based at the Havana Biltmore Yacht and Country Club. Claimant's income tax records in the file establish the taking of a loss by claimant of \$12,000.00 for the seizure of the cruiser early in 1960. In the absence of evidence to the contrary, the Commission finds that the cruiser was taken by the Government of Cuba on March 1, 1960.

On the basis of all the evidence of record, the Commission concludes that claimant suffered a loss in the amount of \$12,000.00 on March 1, 1960 within the meaning of Title V of the Act.

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:

CU-0502

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$ 833.30
March 1, 1960	12,000.00
August 16, 1960	27,187.69
October 24, 1960	8,567,168.70
February 23, 1961	98,500.00
March 13, 1961	90,767.97
May 1, 1961	122,419.62
September 13, 1961	430,276.87
March 19, 1962	55,180.53
July 5, 1962	3,650.64
December 15, 1962	99,800.41
	<u>\$9,507,785.73</u>

CERTIFICATION OF LOSS

The Commission certifies that WILLIAM A. POWE 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 Nine Million Five Hundred Seven Thousand Seven Hundred Eighty-five Dollars and Seventy-three Cents (\$9,507,785.73) 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

FEB 12 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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 reparation 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).)

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