

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

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In the Matter of the Claim of	}	
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	}	Claim No. CU-2-001
STARWOOD HOTELS & RESORTS	}	
WORLDWIDE, INC.	}	Decision No. CU-2-001
	}	
Against the Government of Cuba	}	

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Counsel for Claimant: Lawrence E. Levinson, Esquire  
DLA Piper Rudnick Gray Cary US LLP

PROPOSED DECISION

This claim against the Government of Cuba is based upon the alleged nationalization or other taking of real and personal property in Cuba owned by the claimant's subsidiary, Radio Corporation of Cuba.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. 1623(a)(2002).

By letter to the Chairman of the Commission dated July 15, 2005 (the "Referral Letter"), the Secretary has referred for adjudication by the Commission a category of claims of United States nationals against the Government of Cuba, defined as property claims that:

a. would have been eligible under the Cuban Claims Program (22 U.S.C. § 1643 et seq.) but for the fact that they did not arise by the time of the filing deadline of May 1, 1967, provided that they were not otherwise adjudicated by the Commission prior to the completion of the Cuban Claims Program;

b. arise on or before the date of publication of a *Federal Register* notice by the Commission concerning the . . . referral;

c. are determined in accordance with the provisions of the Cuban Claims Program to the extent that such provisions are not inconsistent with 22 U.S.C. § 1623, and where such inconsistency exists, in accordance with the provisions of 22 U.S.C. § 1623;

d. are not claims for disability or death as provided under 22 U.S.C. § 1643b(b);

e. are submitted [to the Commission] within six months of the *Federal Register* notice; and

f. are determined by the Commission within twelve months of the *Federal Register* notice.

On August 11, 2005, the Commission duly published notice in the Federal Register announcing the commencement of its Second Cuban Claims Program pursuant to the referral by the Secretary of State. 70 F.R. 46890 (August 11, 2005). Thereafter, on August 19, 2005, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits laying out the elements of the claimant's claim. Subsequently, on January 23, 2006, and February 24, 2006, the Commission received further submissions from the claimant describing and documenting its claim in greater detail.

According to the record now before the Commission, this claim is based on the uncompensated nationalization or other taking by the Cuban government of two large parcels of land in the vicinity of the José Martí International Airport near Havana, Cuba, and a third parcel east of Havana near the ocean. The land was originally acquired and owned by the Radio Corporation of Cuba ("RCC"), a wholly owned Cuban subsidiary of International Telephone and Telegraph ("ITT"), which was broken up and sold off in 1998, with the portion comprising RCC being acquired by the present claimant. In addition, claimant asserts that RCC owned bank accounts in Havana holding approximately 77,000 Cuban pesos which were lost as part of the government seizure of the company's property in 2003. A portion of the claim is said to have arisen in 1968, when the Castro regime seized some 425,000 square meters of land adjacent to the airport for extension of the airport runway, and the remainder assertedly arose in 2003, when the regime seized RCC and ordered its dissolution.

The Commission previously found ITT to be a United States national in the Commission's First Cuban Claims Program. *Claim of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION against Cuba*, Claim No. CU-2615, Decision No. CU-5013 (1970). According to the present claimant's (Starwood's) Statement of Claim, it was organized under the laws of the State of

Maryland on March 27, 1980, and from September 30, 2003, until the filing of this claim in August 2005, at least 90 percent of its shares of stock was owned by nationals of the United States. In addition, documentation in the file indicates that well over 50 percent of the claimant's stock was owned by United States nationals from 1998 to 2003. Further, the Commission determined in its East German claims program that ITT qualified as a United States national during a period which included the years 1968 to 1981. *Claim of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION against the German Democratic Republic*, Claim No. G-2401, Decision No. G-3164 (1981).

Turning more specifically to the factual details of the claim, the record reflects that RCC was established by ITT in Cuba in 1922 and in 1929 was granted a concession for the purpose of facilitating commercial telephone and telegraph communications between Cuba and the United States and other countries. As sites for the antennas and other equipment and apparatus required for conducting its communications business, it eventually acquired three tracts of land,<sup>1</sup> described as follows:

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<sup>1</sup>The record also reflects that RCC owned and occupied a fourth parcel of real property consisting of an office building at 508 Avenida Salvador Allende.(formerly Avenida Carlos III). Although this property was originally included in its claim, claimant has advised the Commission that it does not wish to press a claim for the seizure of that property, or the personal property contained therein.

1. A tract identified as "Cabañas" consisting of 1,207,818 square meters (about 298.4 acres), acquired in 1946 and adjacent to what is now known as José Martí International Airport, on which RCC operated a radio receiving station.

2. A tract identified as "Finca Margarita" consisting of 880,000 square meters (about 217.4 acres), also acquired in 1946 and located some 22 miles from Havana, about 4.5 miles from José Martí International Airport, on which RCC operated a transmitting station.

3. A tract identified as "Guanabo" consisting of 18,733 square meters (about 4.6 acres), acquired in 1955 and located some 15 miles from Havana, about ½ mile from the coast, on which RCC operated an over-the-horizon radio station.

In addition, the record reflects that RCC owned several bank accounts in Cuba with a balance of 77,066.95 Cuban pesos as of May 31, 2003.

According to the claim file, claimant's subsidiary RCC ended the last of its communications operations in 1992, after Hurricane Andrew destroyed a receiving station in Florida City, Florida, to which RCC had been transmitting. However, the Cuban government allowed the company to continue to exist, with an office in Havana to which several employees reported for work each day, until one day in late September 2003, when Cuban law enforcement authorities seized the office and

ordered the company's dissolution. The record indicates that this was completed on September 30, 2003.

Based on its review of the evidence and information submitted, the Commission finds that the claimant's predecessor, ITT, was a United States national at all times relevant to this claim, that it was the sole owner of the Cuban company RCC, that RCC owned approximately 425,000 square meters of land which was part of the "Cabañas" tract adjacent to the José Martí International Airport outside Havana, and that this land was nationalized or otherwise taken by the Cuban government, without payment of compensation, during the year 1968. For lack of a precise date, the Commission will deem the taking of the property to have occurred as of January 1, 1968. The Commission further finds that the present claimant succeeded to ownership of the portion of ITT's assets consisting of RCC's claim for the resulting loss of this property through acquisition of its interest in ITT in 1998. Accordingly, claimant is entitled to compensation for the taking of the 425,000 meters of land here in question, dating from January 1, 1968.

Additionally, the Commission finds that RCC owned 782,818 square meters of land consisting of the remainder of the tract known as "Cabañas" near José Martí International Airport outside Havana, Cuba, along with a tract of land measuring 880,000 square meters known as "Finca Margarita" and located some 22 miles from

Havana, about 4.5 miles from José Martí International Airport, and a tract of land consisting of 18,733 square meters known as "Guanabo" and located some 15 miles east of Havana, about ½ mile from the ocean, and that the present claimant succeeded to ownership of these three tracts of land, as well as RCC's bank account, when it acquired RCC from ITT in 1998. Further, the Commission finds that in September 2003 the Cuban government seized the offices of RCC and ordered the dissolution of the company, which was completed on September 30, 2003, and that as a result, the three tracts and RCC's bank account were also nationalized or otherwise taken by the Cuban government, without payment of compensation, as of September 30, 2003. Accordingly, the claimant is entitled to compensation for the loss of the property as of that date.

Turning to the question of the value of the tracts of land and bank account on the dates of loss, claimant has not assigned a separate value to the portion of the Cabañas tract taken in 1968, but instead has listed the entire tract of approximately 1.2 million square meters at a value of \$36,000,000, or \$30 per square meter, as of 2003. As for Finca Margarita and Guanabo, claimant asserts that the values of the respective tracts were \$30 per square meter and \$40 per square meter in 2003. These figures are said to represent the value of the land alone; whatever structures

or other improvements that may still exist on the tracts are not considered to have any value.

In support of these value figures, claimant has submitted, among other things, an extensive affidavit by Mr. Jose C. Duarte da Silveira, who served as an executive, and later Overseas Area General Manager, with ITT from 1950 to 1994 and since then has worked as a consultant for ITT and Starwood. Mr. Duarte states that he developed a comprehensive familiarity with RCC and its assets and operations which continued up to as recently as 2003 when he last visited Cuba and inspected RCC's facilities. In addition, he states that he consulted extensively with land value experts in Puerto Rico to corroborate and refine his appraisals of the three RCC tracts here in issue. Further, under date of February 24, 2006, claimant's counsel has provided a report by claimant's corporate staff discussing the results of a survey it conducted of the values of broadly comparable land in Costa Rica, the British Virgin Islands, St. Kitts, St. Maarten, Puerto Rico, the Bahamas, the Turks and Caicos, and Cancun, Mexico, as well as an article from the June 6, 2002, issue of the magazine *Caribbean Business*<sup>2</sup> on the value of vacant land in Puerto Rico.

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<sup>2</sup>"From Deficit to Surplus: A Cash-Strapped, Tax-Hungry Government Sits on More than \$7 Billion of Idle Real Estate that Could Make Budget Deficits Disappear Overnight," by Marialba Martinez

Subsection 4(a)(2)(B) of Title I of the ICSA provides:

In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of taking by the foreign government involved . . . .

22 U.S.C. 1623(a)(2)(B)(2002).

Based on comparisons with other claims involving vacant land that were adjudicated in its First Cuban Claims Program,<sup>3</sup> the Commission finds that the 425,000-square-meter portion of the Cabañas tract had a value of \$1.00 per square meter, or \$425,000.00, as of the taking date of January 1, 1968. As for the land taken in 2003, the Commission is satisfied from its review of Mr. Duarte's affidavit and the recently submitted studies that the three tracts had values at the time of the taking that were at least equal to the figures asserted by the claimant. Accordingly, the Commission finds that as of September 30, 2003, the remaining 782,818 square meters of the Cabañas tract had a value of \$23,484,540.00, and that the Finca Margarita and Guanabo tracts had respective values of \$26,400,000.00 and \$749,320.00 as of that date. Accordingly, claimant is entitled to compensation in the principal amount of \$425,000.00, dating from January 1, 1968, and to compensation in the principal amount of \$50,633,860.00, dating from September 30, 2003. Lastly, based on the Cuban Government's own well-known contention that the exchange

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<sup>3</sup>E.g., Claim of BURRUS MILLS against Cuba, Claim No. CU-0548, Decision No. CU-4234 (1969).

rate between the Cuban peso and the United States dollar was 1:1 in 2003,<sup>4</sup> the Commission finds that RCC's bank account had a value of \$70,066.95 as of September 30, 2003, and that claimant is entitled to compensation in that amount for the account's loss as of that date.

#### INTEREST

Consistent with its decisions in the First Cuban Claims Program, the Commission further finds that claimant is entitled to interest on the amounts to which it has been found entitled herein, at the rate of 6 percent from the dates of loss to the date of settlement. *Claim of LISLE CORPORATION against Cuba*, Claim No. CU-0644, Decision No. CU- 0267 (1967).

#### CERTIFICATION OF LOSS

The Commission certifies that STARWOOD RESORTS AND HOTELS WORLDWIDE, INC., suffered a loss, as a result of actions of the Government of Cuba, within the scope of the Secretary of State's Referral Letter of July 15, 2005, and the International Claims Settlement Act of 1949, as amended, in the principal amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00), with interest thereon at 6 percent per annum from January 1, 1968, and in the principal amount of Fifty Million Seven Hundred Three Thousand Nine Hundred Twenty-Six

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<sup>4</sup>See, e.g., Central Intelligence Agency World Factbook, 2004, p.143 (based on information available as of January 1, 2004).

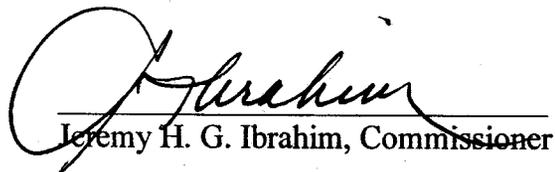
Dollars and Ninety-Five Cents (\$50,703,926.95), with interest thereon at 6 percent per annum from September 30, 2003.

Dated at Washington, DC and entered as the Proposed Decision of the Commission

MAR 02 2006



Mauricio J. Tamargo, Chairman



Jeremy H. G. Ibrahim, Commissioner

This decision was entered as the Commission's Final Decision on APR 07 2006

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this 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 Regulations, 45 C.F.R. 509.5 (e) and (g) (2005).