UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:19-cv-23988-RNS

DANIEL A. GONZALEZ,

Plaintiff,

v.

AMAZON.COM, INC. a
Delaware Corporation, and
SUSSHI INTERNATIONAL, INC.,
a Florida Corporation d/b/a
FOGO CHARCOAL,

Defendants.
_____/

DEFENDANT AMAZON.COM, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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I. INTRODUCTION

Congress created a private right of action in Title III to hold persons liable for trafficking in property confiscated by the Cuban Government. But Congress intentionally limited liability to persons who "knowingly and intentionally" trafficked in the property actually confiscated by the Cuban Government, and provided the right of action only to persons who before March 12, 1996 were both United States citizens and acquired an ownership interest in the confiscated property. Plaintiff has failed to allege, and refuses to allege, any *facts* establishing the fundamental elements of a Title III claim. Plaintiff fails to allege that he acquired an ownership interest in the property before March 12, 1996, or that he was a United States citizen before March 12, 1996, or that the property at issue was actually confiscated by the Cuban Government, or that Amazon "knowingly and intentionally" trafficked in any property confiscated by the Cuban Government. Because it fails to allege facts supporting any of these elements for a Title III claim, the Complaint should be dismissed.

The Act was intended to protect property rights of United States citizens and to deter investors from doing business with the Cuban Government. For this reason, Congress limited liability only to parties who knowingly and intentionally traffic in the confiscated property, and provided a right of action to persons who had an interest in the property and were U.S. citizens *prior to* March 1996. Requiring plaintiffs to have been a United States citizen when the law was enacted in 1996 was intended to prevent foreign nationals from transferring claims to United States citizens and then filing a Title III claim. Title III requires a party to knowingly and intentionally traffic in confiscated property because Congress wanted to deter investors from *purposefully* transacting business with the Cuban Government. Plaintiff fails to plead the core facts essential to the purpose of, and to state, a Title III claim.

Plaintiff seeks to hold Amazon liable for trafficking in property confiscated by the Cuban Government based solely on the allegation that an unidentified third party posted for sale on Amazon.com charcoal that was labeled as being produced by "independent farmers in Cuba." Plaintiff concludes, without any factual support, that the charcoal for sale on Amazon.com came from land that was owned by his grandfather and confiscated by the Cuban Government (the "Farmland"). Unable to plead facts to support any of the elements of a Title III claim, Plaintiff's Opposition rests upon conclusory allegations that merely track the elements of a Title III claim. Those allegations are insufficient to state a claim as a matter of law.

II. ARGUMENT

A. Plaintiff Fails To Plead Necessary Facts To Plausibly Show Amazon "Knowingly And Intentionally" Trafficked In Confiscated Property

Plaintiff insists in his Opposition that he alleged sufficient *facts* to plausibly show that Amazon "knowingly and intentionally" trafficked in property confiscated by the Cuban Government simply by regurgitating the *conclusion* that Amazon "knowingly" and "intentionally" trafficked in property confiscated by the Cuban Government. (*See* Opp., at 4.) Plaintiff argues that he may plead generally Title III's scienter element, citing to Rule 9(b), which allows the "condition[] of a person's mind" to be generally plead. (*Id.*, at 3.) But under Rule 9(b)'s general pleading standard "a complaint must include 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,' and must include allegations plausibly suggesting (not merely consistent with) the plaintiff's entitlement to relief." (*Id.*, at 3–4 (quoting *Lisk v. Lumber One Wood Preserving, LLC*, 792 F.3d 1331, 1338–39 (11th Cir. 2015)).)[1] So too under Rule 8, a complaint must be dismissed unless it "contain[s] sufficient

[1] This Court dismissed a claim with a scienter requirement because the complaint lacked sufficient facts to demonstrate the requisite knowledge. (Mot., at 16–17 (citing *Ruiz v. Experian Info. Sols., Inc.*, 16-CV-25102, 2017 WL 1378242, at *2 (S.D. Fla. Apr. 14, 2017).) Plaintiff does

factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under both Rules 8 and 9, simply stating the statutory elements for scienter, *i.e.*, Amazon "knowingly and intentionally" trafficked in confiscated property, is not sufficient. Causes of action, such as the one provided by Congress in Title III, that have elements of knowledge or intent cannot be plead, as Plaintiff argues, in a conclusory fashion. (Mot., at 16 (collecting cases).)[2]

Plaintiff does not dispute that to be liable for "trafficking" under Title III, Amazon must have known or had reason to know that the property it trafficked in was "confiscated property" by the Cuban Government, and that Amazon must have intended to traffic in that confiscated property. (*Id.* at 15.) The Complaint's factual allegations against Amazon are solely that it operated a website where charcoal described as being from Cuba was posted for sale by an unknown third person. (*Id.* at 10; Opp., at 4.) But Plaintiff has not alleged – as he must – facts showing or even suggesting that Amazon knew or should have known that the charcoal came from

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not even address, much less dispute, this Court's decision, which rejects Plaintiff's position that he may allege knowledge and intent in conclusory fashion.

[2] Plaintiff's cases are in agreement; in fact, in two of the three cases cited for the pleading standard of claims with a scienter requirement the Eleventh Circuit affirmed dismissal for failure to allege facts showing state of mind or scienter. In *Mizzaro v. Home Depot, Inc.*, the Eleventh Circuit affirmed dismissal of a securities fraud case, holding that plaintiff "failed to plead scienter adequately." 544 F.3d 1230, 1254 (11th Cir. 2008*). Roe v. Aware Woman Ctr. for Choice, Inc.*, was a case brought under the Freedom of Access to Clinic Entrances Act, which provides civil remedies for anyone whose ability to obtain reproductive health services has been intentionally interfered with. 253 F.3d 678, 679 (11th Cir. 2001). The Eleventh Circuit affirmed dismissal because "the complaint contains no allegations, inferential or otherwise, regarding the defendants' motive"—an essential element of the claim. *Id.* at 684. Finally, in *Lisk*, the court determined that plaintiff adequately alleged a third-party beneficiary claim because it was able to infer from the alleged *fact* that defendant warranted the quality of its products that the defendant intended "to warrant its product to end users." 792 F.3d 1331, 1338. Unlike in *Lisk*, here, Plaintiff does not, and cannot, point to any alleged facts from which the Court could infer that Amazon knew the Farmland was property confiscated by the Cuban Government and intended to traffic in it.

the property confiscated by the Cuban Government, *i.e.*, the Farmland, or that Amazon intentionally trafficked in that confiscated property.

With only cursory analysis, Plaintiff wrongly relies on *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724 (S.D. Fla. Aug. 28, 2019) (Bloom, J.),[3] a Helms-Burton case that survived a motion to dismiss. (*See* Opp., at 5 ("this Court has concluded that another Title III plaintiff has sufficiently plead allegations under the Libertad Act having very similar language to the instant Complaint").) But in *Havana Docks* I, the defendant did not challenge whether the complaint failed to adequately allege scienter, and the Court did not consider or address Title III's scienter pleading requirement when denying defendant's motion to dismiss. *See* Motion to Dismiss, *Havana Docks* I, ECF No. 47. Moreover, because the plaintiffs failed to adequately show that they had an ownership interest at the time of the alleged trafficking, Judge Bloom *granted two Rule 12(b)(6) motions to dismiss with prejudice in related Title III cases* brought by Havana Docks, in which the Court "reconsider[ed] its previous interpretation of the statute . . ." *Havana Docks Corp. v. MSC Cruises SA CO, et al*, Case No. 19-cv-23588, 2020 WL 59637, at *2, *5 (S.D. Fla. Jan. 6, 2020); *see also Havana Docks Corp. v. Norwegian Cruise Line Holdings, LTD.*, Case No. 19-cv-23591, at *5 2020 WL 70988 (S.D. Fla. Jan. 7, 2020).

More fundamentally, the plaintiff's allegations in *Havana Docks* I are entirely distinct from Plaintiff's allegations against Amazon. In *Havana Docks* I, Carnival allegedly brought cruise passengers directly to the property that the Cuban Government had confiscated. Compl. ¶¶ 6, 11–12, *Havana Docks* I, ECF No. 1. And, critically, the plaintiff had a certified claim by the Foreign Claims Settlement Commission ("FCSC"), which was authorized by Congress to consider claims against the Cuban Government resulting from nationalization of property owned by United States

[3] Hereinafter referred to as ("*Havana Docks* I").

nationals. *See* 22 U.S.C. § 1643b(a). The FCSC had issued a public final order certifying that the plaintiff suffered a loss related to the value of the property actually confiscated by the Cuban Government and the Order certifying the claim notified Carnival that the property, *i.e.*, the docks, had been confiscated. *Havana Docks* I, ECF No. 1-1, at 2-4, attached hereto as Ex. 1 (Havana Docks' Certified Claim). By contrast, Plaintiff does not allege facts that Amazon had any involvement with the confiscated Farmland or that Amazon had reason to know that the charcoal being sold by a third party came from the Farmland, much less that the Farmland was confiscated.

Plaintiff contends that Amazon's Motion to Dismiss somehow "disputes issues of fact." (Opp., at 5 ("the issues raised by Amazon concerning Fig. 1 of the Complaint is a factual dispute not appropriate at this stage, as it calls into question a direct issue of fact.").) To be clear, Amazon is not disputing any of the facts alleged (for the purpose of its Motion to Dismiss). Rather, the Complaint should be dismissed because of the absence of factual allegations in the Complaint. The allegation of a single posting on Amazon.com by an unknown person with the marketing statements in Fig. 1 of the Complaint (*i.e.*, that charcoal is "Direct from Farmers in Cuba" and "sourced from independent farmers in Cuba") cannot support a conclusion that Amazon trafficked in the Farmland both knowingly and intentionally. As the Motion carefully explains, simply having reason to know that the product might have been from Cuba does not suggest that Amazon had reason to know that the product was from property confiscated by the Cuban Government. (*See* Mot., at 18–19.) The Opposition does not argue that facts were alleged from which the Court could infer that Amazon had reason to know that the product *came from property confiscated by the Cuban Government*, and therefore plaintiff concedes this point. *See Brady v. Medtronic, Inc.*, No. 13-CV-62199-RNS, 2014 WL 1377830, at *6 (S.D. Fla. Apr. 8, 2014) (Scola, J.) (failure to address argument in opposition to motion to dismiss waives counterargument).

Finally, the Opposition claims that trafficking in charcoal is the same as trafficking in the confiscated Farmland. (Opp., at 6.) Plaintiff's argument is difficult to follow, but concludes with a hypothetical ostensibly intended to convey that Amazon's position would lead to absurd results:

> in the mining context, for example, a trafficking party could escape liability under Title III by investing in only the oil and gas deposits extracted from the confiscated property because the oil and gas would somehow (and magically) become "unconfiscated" property when extracted from the confiscated property.

(*Id.*, at 6-7) The hypothetical is useless for understanding Title III's *scienter* requirement because it does not include critical facts as to *scienter*—whether the investor knew or had reason to know that the oil and gas deposits were confiscated property. If not, then the scienter requirement would not be satisfied. Far from leading to an absurdity, as Plaintiff suggests, the result in Plaintiff's hypothetical is consistent with Helms-Burton's purpose of targeting activity that is capable of being deterred. (Mot., at 13–15.) Here, because Plaintiff cannot allege facts from which the Court could plausibly infer that Amazon knowingly and intentionally trafficked in property confiscated by the Cuban Government, Plaintiff's claim fails as a matter of law.

B. Plaintiff Fails To Plead That Amazon Trafficked In The Property Confiscated by the Cuban Government – The Farmland

To state a claim under Title III, Plaintiff must also allege that Amazon trafficked in the property actually confiscated by the Cuban Government to which he owns a claim. (Mot., at 20–21); *see also Havana Docks v. MSC*, 2020 WL 59637, at *4 ("[a]ny other interpretation of the Act would require the Court to ignore . . . the qualifying word[] 'such' . . . out of the liability imposing language . . . which would run afoul of basic canons of statutory interpretation."). Plaintiff acknowledges that he attempted to allege that Amazon trafficked in the charcoal, not in the Farmland. (Opp., at 7.) Allegations that Amazon trafficked *in charcoal*, however, do not give rise to a claim under Title III because the Cuban Government did not confiscate charcoal and Plaintiff

does not own a claim to the confiscated charcoal. (*See* Mot., at 22.) Because Plaintiff cannot allege that Amazon trafficked in the property confiscated by the Cuban Government—the Farmland—Plaintiff fails to state a claim under Title III.

Plaintiff argues that the charcoal is one in the same as the Farmland, and thus trafficking in charcoal that was not confiscated by the Cuban Government is the same as trafficking in the Farmland that was allegedly confiscated. (Opp., at 7.) As correctly noted by the Plaintiff, Helms-Burton "defines 'property' in broad terms" (*id.*) as "any property . . . whether real, personal, or mixed . . . ." 22 U.S.C. § 6023(12)(A). Notably, the Act's definition of "property" intentionally does *not* include items produced on the subject property. Moreover, the broad definition supports the position that the charcoal is *not* the same as the Farmland. By defining "property" to include both real and personal property, a party can be liable under Helms-Burton if it traffics in personal property (*e.g.*, charcoal) confiscated by the Cuban Government separate and apart from liability for trafficking in real property (*e.g.*, the Farmland) from which the charcoal allegedly came.[4] Moreover, the legislative history of Title III shows Congress intended to discourage persons and companies from engaging in commercial activity *involving* the specific property confiscated by the Cuban Government. (*See* Mot., at 21.)[5] As such, Plaintiff's allegation of trafficking in the

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[4] Oddly, the Opposition also cherry-picks a definition of "property" in the Internal Revenue Code, stating, "[A]ll of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property . . . ." (Opp., at 7 (quoting 26 U.S.C. § 614(b)(1)(A)).) Because "property" is explicitly defined in Helms-Burton the Court "must follow that definition" not a definition in an unrelated statute. *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000). Insofar as the Internal Revenue Code has any relevance, it shows that Congress knows how to define "property" such that real property and resources are treated as one property, but chose not to in Helms-Burton. *See Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 789 F.3d 1206, 1217 (11th Cir. 2015) ("Where Congress knows how to say something but chooses not to, its silence is controlling." (quoting *In re Haas*, 48 F.3d 1153, 1156 (11th Cir. 1995)).)

[5] Title III allows for recovery in the amount of "the fair market value" of the confiscated property, further indicating that the trafficking must be in the confiscated property itself. 22 U.S.C. § 6082(a)(1)(A)(i)(III).

charcoal does not satisfy the requirement for a Title III claim that Amazon trafficked in confiscated property (because the charcoal was not confiscated). For this reason alone, Plaintiff fails to state a claim under Title III.

In addition, "traffics" as defined in Helms-Burton excludes "transactions and uses of property by a person who is *both* a citizen of Cuba and a resident of Cuba, *and* who is not an official of the Cuban Government or the ruling political party in Cuba." 22 U.S.C. § 6023(13)(B)(iv) (emphasis added). Plaintiff alleges that the charcoal comes from "independent farmers" in Cuba, and thus Plaintiff pleads facts showing a transaction and use of the confiscated property by a Cuban citizen or resident, not by the Cuban Government. The Opposition claims that "independent farmers" referenced in the label on the charcoal is a "relative term" in Cuba, "as the fundamental precepts [sic] of communism is that the state owns the land." (Opp., at 8.) However, it is not plausible to read "independent farmers" to mean the Cuban Government or, as suggested in the Opposition, as possible "instrumentalities of the Cuban Government." (*Id.*)

Apart from improperly asking the Court to construe "independent" as the opposite of its meaning, Plaintiff's proposal would render the exclusion in § 6023(13)(B)(iv) meaningless. Under Plaintiff's interpretation, all transactions involving land in Cuba would necessarily be by the Cuban Government. In other words, no transaction or use of property could ever be undertaken by a Cuban citizen and resident who is not an official of the Cuban Government. As such, under Plaintiff's theory no transaction or use of property could ever fall within the exclusion. *See Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons" is that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant" (internal quotation omitted).) For this independent reason, Plaintiff fails to state a claim under Title III.

C. Plaintiff Fails To Adequately Allege An Actionable Ownership Interest

Plaintiff acknowledges that he cannot bring a claim under Title III unless he acquired ownership of his claim to the Farmland before March 12, 1996 *and* was a United States national before March 12, 1996. (Mot., at 23–24; Opp., at 8–9.) Congress established these essential requirements so that individuals would not relocate to the United States to bring Title III claims. (Mot., at 24.) President Clinton's official statement allowing Title III to come into force underscored Congressional intent and the necessary requirement to state a Title III claim:

> [A]ll companies doing business in Cuba are hereby on notice that by trafficking in expropriated *American* property, they face the prospect of lawsuits and significant liability in the United States.[6]

But, inexplicably, the Complaint does not allege an ownership interest. And tellingly, Plaintiff's Opposition does not even say that he can allege facts necessary to state a Title III claim, including that he acquired an ownership interest prior to March 12, 1996, or that he was a United States national at that time. *See Havana Docks v. MSC.*, 2020 WL 59637, at *4 (dismissing Title III claim for failure to allege actionable ownership interest); *Havana Docks v. Norwegian*, 2020 WL 70988, at *5 (same).

Not only has Plaintiff failed to allege these essential requirements of a Title III claim, he has failed to allege facts to show that he "owns a claim" to the Farmland. Plaintiff's allegation of an ownership interest is wholly conclusory, yet he contends it satisfies his pleading burden. (Opp., at 9–10.) Case law cited in Amazon's opening brief, however, clearly holds that such conclusory allegations of ownership are insufficient. (*See* Mot., at 24 (citing cases.)

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[6] President's Statement on Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, 32 Weekly Comp. Pres. Doc. 1265 (July 16, 1996) (G.P.O. authenticated version available at www.govinfo.gov/content/pkg/WCPD-1996-07-22/pdf/WCPD-1996-07-22-Pg1265.pdf), attached hereto as Ex. 2 (emphasis added).

The Opposition responds only by claiming that Amazon's Motion to Dismiss is "premature" and that issues of fact are to be decided later. (Opp., at 9.) The Opposition relies on *Garcia-Bengochea v. Carnival Corp.* and *Havana Docks* I, but fails to analyze the facts in those cases. (*Id.*) In those cases, the plaintiff had a certification of a claim to an ownership interest, which under Title III, the Court is *required* to "accept as *conclusive proof of ownership* of an interest in property." 22 U.S.C. § 6083(a)(1) (emphasis added). The plaintiffs attached to their complaints their certified claims to the confiscated property, demonstrating the value of the plaintiffs' claim, that the plaintiffs acquired their ownership interests before 1996, and were United States nationals at the time they acquired their ownership interests.[7] In those cases, the certified claims contained *facts* demonstrating the plaintiffs' ownership interest. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (court considering Rule 12(b) motion is limited to facts in complaint *and exhibits*). Here, Plaintiff does not have a certified claim, and therefore must allege other facts from which the Court could infer an actionable ownership interest.[8] The Opposition fails to identify any such facts. For this reason, too, Plaintiff fails to state a claim.

III. <u>CONCLUSION</u>

For the foregoing reasons and those expressed in its opening brief, Amazon requests that the Court dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted.

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[7] *See* Ex. 1 (Havana Docks' Certified Claim); *Garcia-Bengochea v. Carnival Corp.*, 19-cv-21725 (S.D. Fla. May 2, 2019), Compl., at Ex. A, ECF No. 1-1, attached hereto as Ex. 3; *see also* 22 U.S.C. § 1643b(a) ("The Commission shall receive and determine . . . the amount and validity of claims by nationals of the United States against the Government of Cuba . . . for losses resulting from nationalization [of] . . . property . . . owned . . . at the time by nationals of the United States.")

[8] Plaintiff attempts to distinguish *Bengochea* because it involved a partially certified claim. (Opp., at 6.) But in that case the defendant did not argue in its motion to dismiss that the claim was partially uncertified. *See* Motion to Dismiss, *Garcia-Bengochea v. Carnival Corp.*, 19-cv-21725, (S.D. Fla. May 30, 2019), ECF No. 14. And, here, Plaintiff does not have a certified claim and thus there are no facts alleged from which the Court could infer ownership.

Dated: January 10, 2020

Respectfully submitted,

/s/ Robert M. Brochin

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I electronically filed the foregoing with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to counsel for all parties of record.

/s/Robert M. Brochin
Robert M. Brochin

EXHIBIT “1”

EXHIBIT A

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

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION

Under the International Claims Settlement Act of 1949, as amended

Claim No CU -2492

Decision No. CU -6165

Counsel for claimant: Davis Polk & Wardwell by Douglas M. Galin, Esquire

Appeal and objections from a Proposed Decision entered April 12, 1971. Oral hearing requested.

Oral argument September 15, 1971 by Douglas M. Galin, Esquire

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 21, 1971, certifying that claimant suffered a loss of $7,669,420.88 within the scope of Title V of the International Claims Settlement Act of 1949, as amended, resulting from actions of the Government of Cuba.

Claimant, through counsel, objected to the Proposed Decision, and requested an oral hearing which was held on September 15, 1971. In support of the objections claimant submitted an affidavit of John C. Hover, a member of counsel's firm.

In the objections, claimant stated that the concessions and dock facilities had a higher value than the amount determined by the Commission, and that an item of $10,280.00 for handling charges was improperly denied.

Full consideration having been given to claimant's objections, the supporting affidavit, counsel's argument at the hearing, and the entire record, the Commission now finds that in view of the considerable

increase of land values along the Havana waterfront between 1934 and 1960, the value of claimant's concession and tangible assets should be increased from $7,184,360.18 to $8,684,360.18.

Regarding the appraisal of Luis Parajon who valued the above properties at $16,180,000.00, the Commission holds that this appraisal cannot be relied upon to the exclusion of other evidence of record because, inter alia, it does not specify the size and value of the land and improvements thereon separately and individually; and because its findings are based on generalities, not appropriate in this type of evaluation of valuable improved real property.

The Commission further considered claimant's objections with respect to the item of $10,280.00 for handling charges, and finds that these are, in fact, storage charges for unclaimed merchandise, due and payable by the Government of Cuba, and that they should be included in the loss, which is restated as follows:

		Date of Loss
Concession and tangible assets	$8,684,360.18	October 24, 1960
Securities	184,005.70	August 6, 1960
Accounts receivable	301,055.00	October 24, 1960
Debt of Cuban Government	10,280.00	October 24, 1960
Total loss	$9,179,700.88	

The interest at the rate of 6% per annum will be included in the instant case as follows:

FROM	ON
August 6, 1960	$ 184,005.70
October 24, 1960	8,995,695.18

Accordingly, the Certification of Loss in the Proposed Decision is set aside; the following Certification of Loss will be entered; and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that HAVANA DOCKS CORPORATION 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 One Hundred Seventy-nine Thousand Seven Hundred Dollars and Eighty-eight Cents($9,179,700.88) 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 Final
Decision of the Commission

SEP 28 1971

Lyle S. Garlock, Chairman

Theodore Jaffe, Commissioner

CU-2492

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

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-2492

Decision No. CU-6165

Counsel for claimant: Davis, Polk & Wardwell
By Peter H. Madden, Esq.

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 HAVANA DOCKS CORPORATION for $9,915,879.00, based upon the asserted ownership and loss of its assets nationalized by the Government of Cuba.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that in 1917 claimant corporation was organized under the laws of the State of Delaware. Claimant's Vice-President and Assistant Comptroller stated that at all times between August 14, 1917 and the presentation of the claim, more than 50 percent of the outstanding capital stock of all classes has been owned by persons who were United States nationals, and that at the time of filing the claim, of 35,505 outstanding shares of stock of HAVANA DOCKS CORPORATION only 1,003 or approximately 3% of the total outstanding shares were held by persons who were not nationals of the United States. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the "San Francisco", "Machina" and "Santa Clara" linked with a large marginal building. The piers and buildings were used for warehousing purposes, cargo deposits, and for merchandise provisionally stored pending Customs clearance. Each pier consisted of a two-story concrete building with an apron equipped with platforms, and a double railroad track to permit direct unloading of cargo from ships to railroad cars and vice versa. All official port authorities were located within the

marginal building, such as the Customs House of Havana, the Inspector General of the Port, the Immigration Department and other governmental agencies. Elevators, escalators, portable cranes, tractors, trailers, fork lift trucks, and other port and dock equipment were part of claimant's installations on the piers and in the warehouses, which were located in the center of harbor activities of the port of Havana.

Based upon the record, the Commission finds that on September 7, 1934, claimant HAVANA DOCKS CORPORATION obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; that in June, 1946, the property was encumbered with a mortgage in favor of certain bondholders for the amount of $1,600,000.00 in accordance with Public Instrument of June 1, 1946, recorded in Havana on July 25, 1946; and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.

The record further shows that the Cuban assets of claimant corporation were nationalized by Resolution No. 3, published in the Official Gazette of October 24, 1960, pursuant to Law No. 851 of July 6, 1960, and that the facilities of the company were physically occupied by agents of the Cuban Government on November 21, 1960. Accordingly, the Commission finds that the Cuban assets of HAVANA DOCKS CORPORATION were nationalized by the Government of Cuba on October 24, 1960.

Claimant states that the corporation suffered the following losses:

Land and Concession	$ 2,000,000.00
Buildings	6,892,557.00
Personal property, equipment, etc.	595,315.00
Securities (1000 common stock shares of Cuban Telephone Company)	100,000.00
Debts owed by nationalized enterprises and by the Government of Cuba.	328,007.00
	$ 9,915,879.00

In support of this valuation of losses claimant submitted, among other things, the following evidence:

(1) Trial balance as of December 31, 1958;

(2) Balance sheets for the years 1956, 1957, 1958 and 1959;

(3) Auditor's report as of December 31, 1958;

(4) An evaluation of the properties by Mr. Louis Parajon, a civil engineer and former professional appraiser in Cuba; and

(5) An inventory of the equipment, furniture and fixtures as of December 31, 1959.

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.

The record contains a report of the Office of the Property Register of Havana which shows that in 1928, the concession, then owned by the Port of Havana Docks Company, had an assessed market value of $600,000.00, and that a subsequent assessment established the value of the concession at $5,000,000.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the Balance Sheet for the year ended 1959, supported by the Trial Balance for December 31, 1958. These financial statements reflect the following book values adopted by claimant corporation:

Land and Concession	$ 2,000,000.00
San Francisco and Machina Piers	4,758,829.00
Santa Clara Pier	2,110,845.00
Equipment	419,056.00
Office Furniture and Fixtures	90,616.00
Railroad Tracks	22,883.00
Total	$ 9,402,229.00

The record indicates that the pier properties are stated at values appraised as of December 31, 1920, plus subsequent additions at cost. The terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation. The equipment, office furniture were acquired more recently and are stated at cost. The appraiser, Louis Parajon states in his report that in 1960 the concession, real property, office and general equipment had a value of $16,180,000.00 after depreciation, which is considerably more than what the claimant describes as the loss.

The Commission is aware that from 1920 to 1960 real property prices in Havana had increased, and that the values expressed in prices of the year 1920 may not have been realistic in 1960. The Commission, however, notes

that during the prior years claimant corporation allowed for depreciation of the real property and amortization of the concession approximately 1-1/2 per cent per year; and that nothing was added to show any appreciation of the property.

The Commission, therefore, concludes that it would be equitable and appropriate to consider as basic the year 1934 when HAVANA DOCKS CORPORATION obtained the concession for the operation of the docks; to deduct from that year up to the year 1960 one per cent (1%) yearly for amortization of the concession and for the depreciation of the buildings; and further deduct 25% from the stated value of the equipment, furniture and fixtures for wear and tear, assuming that most equipment was in operation during an average time of five years, when it was taken by the Government of Cuba.

The Commission finds that the amount of $2,000,000 includes not only the value of the concession but also the value of the land and of the piers alongside the property which, in the opinion of the Commission, had a value of $1,000,000 in the year 1960.

Amortization and depreciation is therefore applicable as follows:

(a) 1% per year from 1934 to 1960, or 26% on the following values:

Concession	$ 1,000,000	
San Francisco and Machina Piers .	4,758,829	(structures only)
Santa Clara Pier	2,110,845	(structures only)
Railroad Tracks	22,883	
Total	$ 7,892,557	

26% thereof . . . . . $ 2,052,064.82

(b) 25% from the value of the equipment, office furniture and fixtures of $509,672 . . . . . 127,418.00

Total depreciation $ 2,179,482.82

As stated above, the real property was encumbered with a mortgage of $1,600,000 in favor of certain bondholders, but the balance sheet for the year ended December 31, 1959 shows that this funded debt has been reduced to a balance of $38,386.00 as of that date. Consequently, from the value

of the property of		$ 9,402,229.00
must be deducted for depreciation	$ 2,179,482.82	
and the balance of the funded debt	38,386.00	2,217,868.82
resulting in the net value of the tangible property, including concession, of		$ 7,184,360.18

The Commission further finds that claimant corporation was the owner of 1,000 shares of common stock of the Cuban Telephone Company. The Commission has held that the Cuban Telephone Company was nationalized on August 6, 1960 by Resolution No. 1 published by the Government of Cuba pursuant to Law 851, and that the loss sustained by the holders of common stock shares amounted to $184.0057 per share. (See Claim of International Telephone & Telegraph Corporation, Claim No. CU-2615.) Accordingly, claimant suffered a loss as the owner of 1,000 common stock shares in the aggregate amount of $184,005.70.

The Commission further finds that the amount claimed of $328,007 for debts owed by nationalized enterprises and by the Cuban Government, included a debt of $99,097 due from the Government of Cuba, and accounts receivable of $218,630 due to claimant corporation from trade enterprises nationalized, expropriated or intervened by the Government of Cuba. The Commission, therefore, concludes that claimant is entitled to an additional certification of losses for accounts receivable in the amount of $317,727.00.

The Commission does not deduct liabilities of United States corporations and other entities, except for taxes due to the Cuban Government. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.) In the present claim the record shows that taxes accrued at the end of 1959 due to the Cuban Government amounted to $16,672.00.

Therefore, from the sum of accounts receivable of	$317,727.00
the tax indebtedness of	16,672.00
is deducted, leaving a net amount of receivables of	$301,055.00

Included in the debt claim is also an amount of $10,280.00 for handling charges, but the evidence does not disclose that this amount was due from

enterprises nationalized, expropriated, intervened or taken by the Government of Cuba, or that the amount was a charge on property which was nationalized, expropriated, intervened or taken by the Cuban Government, as required by Section 502(3) of the Act. Accordingly, the claim for $10,280.00 for handling charges is denied.

Summarizing, claimant corporation suffered the following losses within the meaning of Title V of the International Claims Settlement Act of 1949, as amended:

		Date of loss
Loss of concession and tangible assets	$7,184,360.18	October 24, 1960
Loss of securities	184,005.70	August 6, 1960
Loss of accounts receivable	301,055.00	October 24, 1960
Total loss	$7,669,420.88	

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:

FROM	ON
October 24, 1960	$7,485,415.18
August 6, 1960	184,005.70

CERTIFICATION OF LOSS

The Commission certifies that HAVANA DOCKS CORPORATION 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 Seven Million Six Hundred Sixty-Nine Thousand Four Hundred Twenty Dollars and Eighty-Eight Cents ($7,669,420.88) 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

APR 21 1971

Lyle S. Garlock, Chairman

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the overnment of Cuba. Provision is only made for the determination by the ommission of the validity and amounts of such claims. Section 501 of the tatute specifically precludes any authorization for appropriations for ayment of these claims. The Commission is required to certify its indings to the Secretary of State for possible use in future negotiations ith the Government of Cuba.

OTICE: Pursuant to the Regulations of the Commission, if no objections e filed within 15 days after service or receipt of notice of this posed Decision, the decision will be entered as the Final Decision of e Commission upon the expiration of 30 days after such service or receipt f notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 1.5(e) and (g), as amended (1970).)

EXHIBIT “2”

Statement on Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995

July 16, 1996

From the outset of my administration, I have been committed to a bipartisan policy that promotes a peaceful transition to democracy in Cuba. Consistent with the Cuban Democracy Act and with the efforts of my predecessors, I have maintained a tough economic embargo on the Cuban regime while supporting the Cuban people in their struggle for freedom and prosperity. Often, the United States has stood alone in that struggle, because our allies and friends believed that pressuring Cuba to change was the wrong way to go.

Five months ago, the world was given a harsh lesson about why we need more pressure on Cuba. In broad daylight, and without justification, Cuban military jets shot down two unarmed American civilian aircraft over international waters, taking the lives of four American citizens and residents. I took immediate steps to demonstrate my determination to foster change in Cuba, including the signing into law of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, which strengthens the embargo, advances the cause of freedom in Cuba, and protects the interests of American citizens whose property was expropriated by the Cuban regime. And I called on the international community to condemn Cuba's actions.

Now the time has come for our allies and friends to do more—to join us in taking concrete steps to promote democracy in Cuba. That is why today, I am announcing a course of action on Title III of the LIBERTAD Act to encourage our allies to work with us and accelerate change in Cuba.

Title III allows U.S. nationals to sue foreign companies that profit from American-owned property confiscated by the Cuban regime. The law also provides me with the authority to suspend the date on which Title III enters into force, or the date on which U.S. nationals can bring suit, if I determine that suspension is necessary to the national interest and will expedite a transition to democracy in Cuba. I have decided to use the authority provided by Congress to maximize Title III's effectiveness in encouraging our allies to work with us to promote democracy in Cuba.

I will allow Title III to come into force. As a result, all companies doing business in Cuba are hereby on notice that by trafficking in expropriated American property, they face the prospect of lawsuits and significant liability in the United States. This will serve as a deterrent to such trafficking, one of the central goals of the LIBERTAD Act.

At the same time, I am suspending the right to file suit for 6 months. During that period, my administration will work to build support from the international community on a series of steps to promote democracy in Cuba. These steps include: increasing pressure on the regime to open up politically and economically, supporting forces for change on the island, withholding foreign assistance to Cuba, and promoting business practices that will help bring democracy to the Cuban workplace.

At the end of that period, I will determine whether to end the suspension, in whole or in part, based upon whether others have joined us in promoting democracy in Cuba. Our allies and friends will have a strong incentive to make real progress because, with Title III in effect, liability will be established irreversibly during the suspension period and suits could be brought immediately when the suspension is lifted. And for that very same reason, foreign companies will have a strong incentive to immediately cease trafficking in expropriated property, the only sure way to avoid future lawsuits.

Our allies and foreign business partners know from our actions over the past 4 months that my administration is determined to vigorously implement the LIBERTAD Act. For example, Title IV of the act bars from the United States individuals who profit from property confiscated from American citizens. My administration has already begun to notify several foreign nationals that they could no longer enter the United States. Rather than face this prospect, a significant number of foreign companies already has chosen to leave Cuba, thereby reducing the flow of resources the regime uses to maintain its grip on power.

Today's action is the best way to achieve the bipartisan objectives we all share: to isolate the Cuban Government and to bring strong international pressure to bear on Cuba's leaders, while holding out the very real prospect of fully implementing Title III in the event it becomes necessary. By working with our allies, not against them, we will avoid a split that the Cuban regime will be sure to exploit. Forging an international consensus will avert commercial disputes that would harm American workers and business and cost us jobs here at home. And it will help maintain our leadership authority in international organizations.

We will work with our allies when we can. But they must understand that for countries and foreign companies that take advantage of expropriated property the choice is clear: They can cease profiting from such property, they can join our efforts to promote a transition to democracy in Cuba, or they can face the risk of full implementation of Title III. As our allies know from our implementation of other provisions of the bill over the last 4 months, my administration takes this responsibility seriously.

For the past four decades Republican and Democratic administrations alike have worked for the transition to democracy of the last nondemocratic regime in our hemisphere. This is a cause the international community should be prepared to embrace. As implemented under today's decision, Title III of the LIBERTAD Act provides us with powerful leverage to build a stronger international coalition for democracy in Cuba if possible and with a powerful tool to lead that struggle alone if necessary. This is in the best interests of our country and in the best interests of the Cuban people.

Memorandum on the Work Requirements Initiative

July 16, 1996

Memorandum for the Secretary of Health and Human Services

Subject: Work Requirements Initiative

I hereby direct you, in order to move people from welfare to work, to exercise your legal authority to propose a regulation that would require all welfare participants in the Job Opportunities and Basic Skills Training (JOBS) program to sign a personal responsibility plan for working within 2 years. After 2 years, any such JOBS participant who refuses to work, even though a job is available, will be sanctioned by loss of her AFDC benefits.

Welfare reform is first and foremost about work. People who are able to work should be expected to go to work. This proposed regulation will dramatically change expectations for welfare recipients and welfare agencies, ensuring that finding work quickly becomes their primary goal.

William J. Clinton

Executive Order 13011—Federal Information Technology

July 16, 1996

A Government that works better and costs less requires efficient and effective information systems. The Paperwork Reduction Act of 1995 and the Information Technology Management Reform Act of 1996 provide the opportunity to improve significantly the way the Federal Government acquires and manages information technology. Agencies now have the clear authority and responsibility to make measurable improvements in mission performance and service delivery to the public through the strategic application of information technology. A coordinated approach that builds on existing structures and successful practices is needed to provide maximum benefit across the Federal Government from this technology.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. It shall be the policy of the United States Government that executive agencies shall: (a) significantly improve the management of their information systems, including the acquisition of information technology, by implementing the relevant provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), the Information Technology Management Reform Act of 1996 (Division E of Public Law 104–106)

EXHIBIT “3”

EXHIBIT A

Colson Hicks Eidson
255 Alhambra Circle, Penthouse, Coral Gables, Florida 33134-5008 Telephone: (305) 476-7400 Fax: (305) 476-7444

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

IN THE MATTER OF THE CLAIM OF

ALBERT J. PARRENO

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-1231

Decision No. CU 5853

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of $636,024.75, was presented by ALBERT J. PARRENO, based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since June 19, 1943.

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:

1,300 shares of stock in La Maritima, S.A., a Cuban corporation	$351,260.00
1,875 shares of stock in Molinera Oriental, S.A., a Cuban corporation	75,000.00
26 shares of 6% preferred stock in Consolidated Railroads of Cuba Corporation, a Cuban corporation	2,496.00
Unimproved real property in Cuabitas, Oriente Province	100,000.00
1/3 interest in house and lot in Marianao, Havana	70,000.00
Dividends due from La Maritima, S.A.	25,662.00
Salary due from La Maritima, S.A.	5,250.00
Dividends due from Molinera Oriental, S.A.	6,356.75
Total	$636,024.75

The record includes the following evidence: Claimant's affidavit of January 16, 1961 submitted to the Department of State; claimant's affidavits and statements submitted to the Commission in this proceeding; stock certificates for some of the shares in question; a submitted copy of claimant's Form TFR-500 "Census of Property in Foreign Countries", a report made in 1943 to the Treasury Department concerning his properties in Cuba.

Additionally, the evidence includes affidavits from individuals with personal knowledge of the facts discussed therein as well as reports received by the Commission from abroad.

Further, there are of record copies of contemporary correspondence evidencing the receipt of dividends by claimant on the stock claimed herein; copies of balance sheets and profit and loss statements for two of the Cuban corporations involved herein; and copies of claimant's tax returns evidencing the allowance of deductions for his Cuban losses.

On the basis of the entire record, the Commission finds that claimant owned certain items of real and personal property in Cuba, discussed in detail below.

La Maritima, S.A.

The Commission finds that claimant owned 1,300 shares of stock in La Maritima, S.A., a Cuban corporation which owned and operated docks and warehouses in Santiago de Cuba, Oriente Province, Cuba.

On October 13, 1960, the Cuban Government published in its Official Gazette Law 890, which listed as nationalized La Maritima, S.A.

Since La Maritima, S.A. 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.)

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". The Commission has concluded that 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.

Claimant's TFR-500 report asserted ownership of 900 shares of stock of La Maritima, S.A. and a value of $90,000.00 based upon the par value of

$100.00 per share. He claimed a tax deduction of $130,000.00 on the basis of 1,300 shares of stock using par value. In his affidavit of January 16, 1961, claimant stated that said stock had a value of $325,000.00 based upon the earnings capacity of the corporation. A former controller of the Cuban corporation who supervised its books and records, set forth in his affidavit of August 11, 1969 the net earnings of the corporation for the years 1949 through 1959 based upon an examination of copies of the financial records of the corporation maintained by claimant. On this basis, claimant asserts a value of $351,260.00 for his stock interest in his affidavit of August 21, 1969.

According to claimant's computations, the corporation earned $540,448.56 for the five-year period 1953 through 1957, averaging $108,089.71 annually. Since there were 4,000 shares of outstanding capital stock of the Cuban corporation, claimant computed that each share had a value of $27.02 based on said annual earnings. Applying a factor of ten times earnings, claimant arrived at a value of $351,260.00 for his 1,300 shares, representing a 32.5% interest in the corporation.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings of the Cuban corporation at 10% to arrive at the going concern value of the corporation. For this purpose, the Commission concludes that the five-year period immediately prior to the date of loss should be employed. (See Claim of Garcia & Diaz, Inc., Claim No. CU-0940.)

The record shows that the net earnings of the Cuban corporation for that five-year period were as follows:

1955	$ 95,102.54
1956	88,510.67
1957	101,471.51
1958	58,533.43
1959	64,512.05
Total	$408,130.20

The average annual net earnings of the Cuban corporation was, therefore, $81,626.04. Accordingly, the value of the Cuban corporation as a going concern on October 13, 1960, the date of loss, was $816,260.40.

Inasmuch as the value of the Cuban corporation as a going concern is based upon its earnings capacity, the Commission holds that the excess of liquid assets, such as cash and current accounts receivable, over current liabilities constitutes additional factors to be considered in determining the overall value of the Cuban corporation. (See Claim of Garcia & Diaz, Inc., Claim No. CU-0940.)

The evidence includes certified reports from the Cuban corporation as of October 13, 1960, which disclose that as of that date the bank accounts had an aggregate balance of $41,587.84 and that the cash on hand from payments made by debtors of the Cuban corporation amounted to $21,574.24. It appears, therefore, that the current accounts receivable were merely being changed in form. The latest available balance sheet, as of August 31, 1960, shows current accounts receivable in the aggregate amount of $66,855.29. Accordingly, the liquid assets of the Cuban corporation amounted to $108,443.13. Since the current accounts payable as shown by that latest balance sheet were $33,780.69, the excess of the liquid assets over the current liabilities was $74,662.44.

The Commission therefore finds that the overall value of the Cuban corporation on October 13, 1960, the date of loss, was $890,922.84, and concludes that claimant's loss was $289,549.92 based on his 32.5% stock interest therein.

Molinera Oriental, S.A.

The Commission finds that claimant owned 375 shares of stock in Molinera Oriental, S.A., a Cuban corporation which operated a flour mill in Santiago de Cuba, Oriente Province, Cuba. The Commission further finds that this corporation was also listed as nationalized pursuant to Law 890 in the Cuban Government's Official Gazette of October 13, 1960.

Claimant claims the loss of 1,875 shares of stock in Molinera Oriental, S.A., asserting that in 1960 his 375 shares with a par value of $100.00 per share were split at the rate of 5 to 1 so that he owned 1,875 shares with a

par value of $20.00 per share. His statement is supported by the affidavit of August 4, 1969 from the former President of the Cuban corporation. That officer states that in 1960 the capitalization of the corporation was increased from $900,000.00 to $1,700,000.00, each new share having a par value of $20.00. It appears, however, that the only available balance sheet for the Cuban corporation is dated as of December 31, 1959, prior to the change in capitalization. In any event, it is clear that claimant's stock interest in the corporation was not affected by that change. It is also noted that in claimant's tax returns he claimed a deduction of $38,250.00 based upon his cost of 375 shares of stock.

Claimant asserts a loss of $75,000.00 for his stock interest in Molinera Oriental, S.A. based on his opinion that the stock was worth about twice its par value. His assertion is not supported by any other documentary evidence of record. It appears from the former President's affidavit that the Cuban corporation was organized in 1956, and that the flour mill was constructed and operating before January 1, 1959.

Based upon the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown by the Cuban corporation's balance sheet as of December 31, 1959.

That balance sheet shows current assets, including deposits of $97,685.36, aggregating $592,692.93. In addition to certain mortgage bonds and other Cuban securities aggregating $13,000.00, the assets included fixed assets in the net amount of $1,977,109.78 after depreciation, and organization expense in the amount of $147,948.30. The profit and loss statement for the year ending December 31, 1959 shows a profit of $299,234.77. Inasmuch as the corporation had been functioning for only a short period of time, it was unable to fully amortize its organization expense. The fact that it was earning substantial profits is a sufficient basis for holding that the organization expense had enhanced the value of the corporation's operations and therefore constituted a valuable asset of the Cuban corporation. Since the liabilities of the corporation are shown in the balance sheet as $1,607,361.06,

the Commission finds that the value of the Cuban corporation or the excess of its assets over its liabilities on October 13, 1960, the date of loss, was $1,123,389.95. Inasmuch as there were 9,000 shares of outstanding capital stock shown in that balance sheet, the Commission finds that the value of one share of stock on the date of loss was $124.8211. Therefore, claimant's 375 shares of stock had a value of $46,807.91.

Consolidated Railroads of Cuba

The Commission finds that claimant owned 26 shares of 6% Cumulative Preferred stock of the Consolidated Railroads of Cuba, a Cuban corporation. The Commission has found that this Cuban corporation was nationalized by the Government of Cuba on October 13, 1960, and that each share of such stock had a value of $272.00 on the date of loss, representing $100.00 in par value and $172.00 in accrued and unpaid dividends. (See Claim of Cora W. Welsh, et al, Claim No. CU-2503.)

Accordingly, the Commission finds that claimant's 26 shares of stock had a value of $7,072.00 on October 13, 1960.

Unimproved Real Property

The Commission finds that claimant owned certain unimproved real property in Cuabitas, Oriente Province, Cuba.

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant. In the absence of evidence to the contrary, the Commission finds that claimant's land in Cuabitas was 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].)

Claimant asserts that the land in Cuabitas had a "minimum valuation of $100,000.00." He points to an affidavit, dated October 7, 1969, from Andres J. Duany who states that he is familiar with the property; that he was engaged in developing land in Cuba; and that in his opinion claimant's land,

measuring 45,734 square meters, "could expect to sell . . . for an amount in the neighborhood of $200,000.00."

In claimant's affidavit of January 16, 1961, submitted to the Department of State, he stated that "An offer of $20,000.00 for the property was refused by the undersigned in 1957." However, in his letter to the Commission of February 16, 1970, claimant stated that the $20,000 "was the value arbitrarily established by me in my January 16, 1961 affidavit based upon a bona fide offer made to me early in 1957 and refused by me as not a fair price." A report from abroad indicates that in 1959 the property had a value of $100,000.00.

Upon consideration of the entire record, the Commission finds that the land had a value of $100,000.00 on December 6, 1961, the date of loss.

House and Lot

The Commission finds that claimant owned a 1/3 interest in a certain house and lot at Marianao, Havana, Cuba.

The Commission further finds that the 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 house and lot 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.)

Claimant states that the value of said improved real property was $210,000.00, and claims $70,000.00 for his 1/3 share. He relies upon an affidavit, dated September 12, 1969, from Gloria Juarrero, who states that she lived in one of the apartments of the building in question; and that in her opinion the property had a value of over $210,000.00.

A report from abroad indicates that the improved real property was acquired by deed on July 19, 1941 and had a value of $10,000.00. In his TFR-500 report claimant stated that the cost of his 1/3 interest was $25,333.33 and that his interest therein had a value of $19,370.37 on May 31, 1943. Claimant's affidavit of January 16, 1961 recites a cost of $77,000.00 in 1939 for the entire piece of property, and an independent

appraisal of $200,000.00 in 1958 when a sale was considered, on which basis he stated that his loss was $66,666.66. His affidavit of August 21, 1969 states that his 1/3 interest in the property had a value of $85,000.00. Based on a total cost of $77,000.00 for the land and building, claimant asserted a tax deduction in the amount of $25,666.00 for his 1/3 interest.

The record indicates that the property consisted of a three-story building, containing 2 apartments on each floor, and situated on land measuring about 1,125 square meters in area. Each apartment had a vestibule, living room, dining room, 2 glass-enclosed porches, 3 bedrooms, 2 bathrooms, kitchen, servant's quarters and bathroom.

Upon consideration of the entire record, the Commission finds that the appraisal of the property in 1958 represents the most appropriate basis for evaluating the property. Accordingly, the Commission finds that the house and lot had a value of $200,000.00 on October 14, 1960, the date of loss. Therefore, claimant's 1/3 interest in the property had a value of $66,666.66.

Dividends and Salary

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

Based upon the evidence of record, including affidavits from officers of La Maritima, S.A. and Molinera Oriental, S.A., who had personal knowledge of the facts, the Commission finds that these two Cuban corporations owed debts to claimant on October 13, 1960 as follows:

1. Dividends due from La Maritima, S.A. in the amounts of $15,600.00 less $936.00 due Cuba, and $11,700.00 less $702.00 due Cuba	$25,662.00
2. Salary due from La Maritima, S.A.	5,250.00
3. Dividends due from Molinera Oriental, S.A. in the amount of $6,762.50 less $405.75 due Cuba	6,356.75
Total	$37,268.75

Recapitulation

Claimant's losses are summarized as follows:

Item of Property	Date of Loss	Amount
Stock interest in La Maritima, S.A.	October 13, 1960	$289,549.92
Stock interest in Molinera Oriental, S.A.	October 13, 1960	46,807.91
Stock interest in Consolidated Railroads of Cuba	October 13, 1960	7,072.00
Unimproved real property	December 6, 1961	100,000.00
House and lot (1/3 interest)	October 14, 1960	66,666.66
Debts due from La Maritima, S.A. and Molinera Oriental, S.A.	October 13, 1960	37,268.75
	Total	$547,365.24

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:

FROM	ON
October 13, 1960	$380,698.58
October 14, 1960	66,666.66
December 6, 1961	100,000.00
Total	$547,365.24

CERTIFICATION OF LOSS

The Commission certifies that ALBERT J. PARRENO 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 Five Hundred Forty-seven Thousand Three Hundred Sixty-five Dollars and Twenty-four Cents ($547,365.24) 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

SEP 16 1970

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, 32 Fed. Reg. 412-13 (1967).)

CU-1231