

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

IN THE MATTER OF THE CLAIM OF

BRONISLAVA FELDE, EXECUTRIX
OF THE ESTATE OF
SAMUEL WINSTON, DECEASED
and
TAMARA BLISS

Claim No. CU-0367
Claim No. CU-0659

Decision No. CU -3679

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Morgenstern & Winnick
By Harry Morgenstern, Esq.

AMENDED PROPOSED DECISION

On June 4, 1969 the Commission issued its Proposed Decision on these claims certifying that Harry Morgenstern, Executor of the Estate of Samuel Winston, Deceased, and Tamara Bliss had suffered losses in the amounts of \$265,242.15 and \$261,342.16, respectively, with interest at 6% per annum from December 6, 1961 to the date of settlement.

Information has been submitted reflecting that BRONISLAVA FELDE is Executrix of the Estate of Samuel Winston, Deceased, who, therefore, is substituted as claimant with respect to Claim No. CU-0367.

Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that BRONISLAVA FELDE, EXECUTRIX OF THE ESTATE OF SAMUEL WINSTON, DECEASED, 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 Two Hundred Sixty-five Thousand Two Hundred Forty-two Dollars and Fifteen Cents (\$265,242.15) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that TAMARA BLISS 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 Two Hundred Sixty-one Thousand Three Hundred Forty-two Dollars and Sixteen Cents (\$261,342.16) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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 claimants establish retention of the securities for 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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

HARRY MORGENSTERN, EXECUTOR OF THE
ESTATE OF SAMUEL WINSTON,
DECEASED

and

TAMARA BLISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0367
Claim No. CU-0659

Decision No. CU
3679

Counsel for Claimants:

Morgenstern & Winnick

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$270,709.41 and \$266,809.57, respectively, were presented by SAMUEL WINSTON, now deceased, and TAMARA BLISS, based upon the asserted losses of stock interests in a Cuban corporation and certain real property in Cuba. The late SAMUEL WINSTON also claimed a debt due from the Cuban corporation. The deceased had been a national of the United States from 1947 until his death in 1967, after the date of filing with the Commission. Accordingly, his executor has been substituted as party claimant. TAMARA BLISS has been a national of the United States since 1944.

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.

Lumar

The record establishes and the Commission finds that the deceased owned 172 shares of preferred stock and 100 shares of common stock in a Cuban corporation, Industrias Lumar, S.A., hereafter called Lumar; and that TAMARA BLISS owned 333 shares of preferred stock and 100 shares of common stock in Lumar.

Lumar was organized under the laws of Cuba and 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 previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This law applied to the deceased and TAMARA BLISS, who had left Cuba prior to that date; and the Commission therefore finds that the stock interests of the deceased and TAMARA BLISS in Lumar were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

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, and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

The record contains a copy of the balance sheet of Lumar as of June 30, 1960; an accompanying schedule showing the respective equities of the stockholders of Lumar including the deceased and TAMARA BLISS; photographs of some of the machinery and equipment of Lumar which was engaged in manufacturing zippers; letters from concerns which sold merchandise to Lumar; and statements of claimants concerning Lumar.

The balance sheet of Lumar as of June 30, 1960 shows the following (the peso being on a par with the United States dollar):

<u>Assets</u>	
Cash	1,100.00
Checks	2,460.15
Notes	3,884.33
Bank	3,194.48
Accounts receivable	47,333.50
Merchandise inventory	440,369.83
Machinery & tools	138,072.41
Installations & improvements	13,526.71
Deposits	1,944.28
Furniture & office supplies	946.80
Reserves	653.72
Good will	651,937.00
Total Assets	<u>1,305,423.21</u>

Liabilities and Capital

Liabilities:		
Bank	20,000.00	
Accounts payable	8,212.44	
Loans payable	<u>25,000.00</u>	
Total Liabilities		53,212.44
Capital:		
Common stock	50,000.00	
Preferred stock	<u>112,000.00</u>	
Total Capital	162,000.00	
Undistributed Profit:		
1957	106,939.14	
1958	139,848.73	
1959	108,473.98	
1960 (6 months)	83,011.92	
Surplus	<u>651,937.00</u>	
Net Worth		<u>1,252,210.77</u>
Total Liabilities and Capital		<u>1,305,423.21</u>

Counsel for claimants has stated that no further evidence concerning the value of Lumar is available, and that the deceased was the only person who could have supplied additional information in this respect.

As noted above, this balance sheet was accompanied by a schedule showing the respective equities of the five stockholders of Lumar in the net worth of \$1,252,210.77. That schedule indicates that the equities of the deceased and TAMARA BLISS were the amounts of \$245,242.15 and \$261,342.16, respectively. It further appears from that schedule that the net undistributed profits for a 3-1/2 year period, ending on June 30, 1960, in the aggregate amount of \$438,273.77 (shown in the above balance sheet) had increased the capital of Lumar's five stockholders to \$600,273.77. In view of these substantial profits and the fact that the stockholders' original investment was \$162,000.00, the managers of Lumar concluded that the concern had built up a valuable asset, good will, which they computed to be \$651,937.00. This amount, added to the tangible assets, creates a net worth of \$1,252,210.77, which is ten times the average annual earnings, \$125,221.08, for the 3-1/2 years of operations. Appropriate entries were made in Lumar's records to give effect to the foregoing computation, which the Commission finds fair and reasonable under the circumstances.

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimants is that shown in the balance sheet of Lumar as of June 30, 1960 and the accompanying schedule. The Commission, therefore, finds that the deceased and TAMARA BLISS sustained losses in the amounts of \$245,242.15 and \$261,342.16, respectively, within the meaning of Title V of the Act on account of their stock interests in Lumar.

Real Property

The deceased and TAMARA BLISS have asserted identical interests in certain land in Guanabacoa, Cuba, each having claimed the amount of \$5,467.41 therefor. The record, however, contains no evidence whatsoever in support of these portions of the two claims. In an effort to assist claimants in documenting their claims in this respect, the Commission attempted to obtain information from sources abroad, but no supporting information was available. Counsel for claimants has stated that no evidence is available to substantiate the claims for said real property.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that the burden of proof has not been sustained with respect to the claims for the losses of real property in Guanabacoa, Cuba. Accordingly, these portions of both claims are denied.

Debt due from Lumar

The deceased had asserted a loss in the amount of \$20,000.00, based upon a loan made to Lumar. In view of the original claimant's death in 1967, no further information concerning this loan appears to be available, according to statements from counsel for claimant,

executor of the estate of the deceased. An examination of the balance sheet for Lumar, however, discloses the item "Loans payable" in the amount of \$25,000.00. In the absence of evidence to the contrary, the Commission accepts the balance sheet as corroborating the claimed loss. The Commission, therefore, finds that the deceased sustained a loss in the amount of \$20,000.00 within the meaning 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).)

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.

CERTIFICATION OF LOSS

The Commission certifies that HARRY MORGENSTERN, EXECUTOR OF THE ESTATE OF SAMUEL WINSTON, DECREASED, suffered a loss, as a result of action 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 Two Hundred Sixty-five Thousand Two Hundred Forty-two Dollars and Fifteen Cents (\$265,242.15) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that TAMARA BLISS suffered a loss, as a result of action 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 Two Hundred Sixty-one Thousand Three Hundred Forty-two Dollars and Sixteen Cents (\$261,342.16) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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and entered as the Proposed
Decision of the Commission

JUN 4 1969

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