

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

IN THE MATTER OF THE CLAIM OF

OSCAR HIGGINBOTHAM
LAURA HIGGINBOTHAM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0429
Claim No. CU-0764

Decision No. CU

3738

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, each in the amount of \$33,563.95, were presented by OSCAR HIGGINBOTHAM and LAURA HIGGINBOTHAM and are based upon the asserted loss of certain stock interests, checks of The Royal Bank of Canada in Havana, Cuba, and a bank account. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Minimax Super-Mercados, S.A.

Claimants assert a claim based on 1,000 shares of stock in Minimax Super-Mercados, S.A.

In our decision entitled the Claim of Libby Holman Reynolds (Claim No. CU-1384 which we incorporate herein by reference), we held that the properties owned by the Company were intervened by the Government of Cuba on September 1, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per preferred share as \$1.0023.

On the basis of evidence in the record in the instant case, the Commission finds that the claimants come within the terms of the Reynolds decision; that they were American nationals at the requisite times; that they have been the joint owners of 1,000 shares of stock in Minimax Super-Mercados, S.A. since prior to September 1, 1960; and that they jointly suffered a loss in the amount of \$1,002.30 within the meaning of Title V of the Act.

Bank Checks and Bank Account

Claim is also asserted for the value represented by four checks submitted by claimants, and which are made out to claimants as payees, and drawn on The Royal Bank of Canada, in Havana, in pesos, as follows:

<u>Date</u>	<u>Amount</u>
May 31, 1960	10,000
May 31, 1960	10,000
June 1, 1960	4,500
June 6, 1960	<u>4,000</u>
	28,500

Additionally, claim is made for 3,063.95 pesos, also in The Royal Bank of Canada. Claimants have submitted bank statements from The Royal Bank of Canada dated October 31, 1960 indicating a balance on that date of 3,593.58 pesos and January 18, 1961, indicating a balance on that date of 3,390.04 pesos. Claimants also indicate that there were 6 checks outstanding subsequent to the last statement totalling 326.09 pesos and that the balance was therefore 3,063.95 pesos.

On the basis of this evidence, the Commission finds that claimants had on deposit with the Havana branch of The Royal Bank of Canada a total of \$31,563.95, the peso being on a par with the United States dollar.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all goods and chattels, rights, shares, stocks, bonds and other securities of persons who had left the country. The Commission has held that this includes bank accounts (see Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].) As the record shows, on May 15, 1960 claimants were residents of the United States. In the absence of evidence to the contrary, the Commission finds that the funds owing to the claimants in the amount of 31,563.95 pesos were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Accordingly, the Commission finds that claimants suffered the following losses within the scope of Title V of the Act:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock in Minimax-Super Mercados, S.A.	September 1, 1960	\$ 1,002.30
Bank checks and bank accounts	December 6, 1961	<u>31,563.95</u>
	Total	\$32,566.25

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 OSCAR HIGGINBOTHAM 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 Sixteen Thousand Two Hundred Eighty-three Dollars and Twelve Cents (\$16,283.12), with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that LAURA HIGGINBOTHAM 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 Sixteen Thousand Two Hundred Eighty-three Dollars and Thirteen Cents (\$16,283.13), 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

JUL 9 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 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).)