

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

IN THE MATTER OF THE CLAIM OF

EDITH S.B. REMER
MARY L.R. STIEF
ELISABETH B.B. LIVINGSTONE
VERA S.S. LITTLEWOOD
FLORENCE L.S. STOTTLEMYER

Claim No. CU - 0596

Decision No. CU - 4213

**Under the International Claims Settlement
Act of 1949, as amended**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$435,722.00, was presented originally by Theodore Bailey, as President of a Cuban corporation known as Theodore Bailey y Compania, Mobiliario de Interior, S.A., which operated a furniture factory and store, doing business in La Lisa, Marianao, Havana, 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 discloses that Theodore Bailey y Compania, Mobiliario de Interior, S.A., hereinafter referred to as Theodore Bailey y Compania, was organized under the laws of Cuba and does not qualify as a corporate "national of the United States," within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, however, 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 evidence of record establishes that there were 320 shares of capital stock issued and outstanding on the date of loss; and that these shares were owned by the stockholders listed below, all of whom were United States nationals at all times pertinent to this claim:

| <u>Stockholders</u> | <u>No. of Shares</u> |
|-----------------------------|----------------------|
| EDITH S. B. REMER | 152 |
| MARY L. R. STIFF | 42 |
| ELISABETH B. B. LIVINGSTONE | 42 |
| VERA S. S. LITTLEWOOD | 42 |
| FLORENCE L. S. STOTTEMYER | 42 |

Accordingly, the aforesaid stockholders are hereby substituted as the claimants herein.

The evidence of record discloses that Theodore Bailey y Compania was intervened at Havana, Cuba, on December 16, 1960, by the Ministry of Labor, Department of Intervention, an agency of the Government of Cuba.

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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 evidence includes data submitted by Theodore Bailey, President of the subject corporation, to the United States Embassy in Havana in 1960, including financial data. The record also includes correspondence, including several letters to Mr. Bailey from persons formerly doing business with the Cuban firm in Havana, and other evidence, including affidavits, photographs, itemized lists of company equipment, inventories, supplies and materials as well as sketches of the factory buildings, with information concerning size, space and facilities.

Theodore Bailey y Compania was established in Havana in 1919. It operated a store located at Prado #112, Havana, and a furniture factory located at Calle 65, #16404, La Lisa, Marianao, Havana, Cuba. Further, the evidence discloses and the Commission finds that the firm owned certain real and personal

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properties and that these properties, listed below, were carried at the following book values in the firm records at the time of loss in December 1960:

Store

Furniture, books, pictures, ornaments and a large collection of furniture as well as 12,000 specially made full-sized plans of furniture

\$ 30,000.00

Office furniture and store equipment

4,455.00 34,455.00

Factory

11,400 square varas of land

40,000.00

2-story building, concrete floors, brick walls, built in 1945, enlarged in 1945, 1952 and 1955, containing 32,000 square feet of floor space

120,000.00

170 machines and equipment

100,629.00

Raw materials on hand

Hardware, upholstery materials

\$18,679.00

Lumber

6,005.00

Veneer of various woods

11,621.00

Lacquers, varnish, miscellaneous

4,129.00

40,434.00

Furniture in stock

24,600.00

Automobile and truck

7,250.00

Yacht "Teddy" moored at Club Obrero, Cubanacan, Jaimanitas, Havana

10,000.00

Office furniture and equipment of factory

2,885.00 345,798.00

Total

\$380,253.00

The Company records also disclose that there were certain accounts receivable which were due and payable at the time of loss in December 1960, as follows:

Debtor

Balance Due

Palacio de Justicia

\$ 8,520.00

Hotel "El Colony", Isle of Pines

6,554.00

Ministerio de Education

20,880.00

Ciudad Escolar Camilio Cienfuegos Las Mercedes Oriente

11,873.00

Banco Gelats (May 1960 contract for merchandise valued at \$10,190.00; 80% completed and \$2,547.50 paid by debtor)

5,604.50

53,431.50

Total

\$433,684.50

The Commission concludes that the most equitable determinations with respect to value of the assets of the Cuban firm are those set forth above, as taken from the records of the subject corporation. However, since the subject enterprise was a Cuban corporation, the Commission is required to determine its net worth and not merely its assets. The evidence of record discloses that the subject firm owed the Godoy-Sayan Bank of Havana the sum of \$28,000.00, as the balance due on a mortgage. Thus, following deduction of this indebtedness, the net value of Theodore Bailey y Compania was \$405,684.50. Accordingly each share of stock of Theodore Bailey y Compania had a value of \$1,267.7640 at the time of loss.

The Commission concludes that the claimants' interests in the losses sustained by Theodore Bailey y Compania, as a result of the intervention of the business enterprise by the Government of Cuba, are as set forth hereafter, in amounts commensurate with their stock ownership:

| <u>Claimant</u> | <u>No. of Shares</u> | <u>Value</u> |
|----------------------------|----------------------|---------------------|
| EDITH S.B. REMER | 152 | \$192,700.13 |
| MARY L.R. STIFF | 42 | 53,246.09 |
| ELIZABETH B.B. LIVINGSTONE | 42 | 53,246.09 |
| VERA S.S. LITTLEWOOD | 42 | 53,246.09 |
| FLORENCE L.S. STOTTLEMYER | 42 | 53,246.10 |
| | | <u>\$405,684.50</u> |

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.

CERTIFICATIONS OF LOSS

The Commission certifies that EDITH S.B. REMER suffered a loss, as a result of actions of the Government of Cuba, within the scope of

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Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Ninety-Two Thousand Seven Hundred Dollars and Thirteen Cents (\$192,700.13) with interest at 6% per annum from December 16, 1960, to the date of settlement;

The Commission certifies that MARY L.R. STIFF 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 Fifty-Three Thousand Two Hundred Forty-Six Dollars and Nine Cents (\$53,246.09) with interest at 6% per annum from December 16, 1960, to the date of settlement;

The Commission certifies that ELISABETH B.B. LIVINGSTONE 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 Fifty-Three Thousand Two Hundred Forty-Six Dollars and Nine Cents (\$53,246.09) with interest at 6% per annum from December 16, 1960, to the date of settlement;

The Commission certifies that VERA S.S. LITTLEWOOD 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 Fifty-Three Thousand Two Hundred Forty-Six Dollars and Nine Cents (\$53,246.09) with interest at 6% per annum from December 16, 1960, to the date of settlement; and

The Commission certifies that FLORENCE L.S. STOTTLEMYER 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 Fifty-Three Thousand Two Hundred Forty-Six Dollars and Ten Cents (\$53,246.10) with interest at 6% per annum from December 16, 1960, to the date of settlement.

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

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes 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).)

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