

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

IN THE MATTER OF THE CLAIM OF

MARY ELLEN K. ANDERSON
DAVID M. KLINEDINST
ELIZABETH K. MCGAVRAN
RUTH K. PHILLIPS
THOMAS JOHN KLINEDINST

Claim No. CU -0741

Decision No. CU

3516

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MARY ELLEN K. ANDERSON, DAVID M. KLINEDINST, ELIZABETH K. MCGAVRAN, RUTH K. PHILLIPS, and THOMAS JOHN KLINEDINST, and is based upon the asserted loss of \$1,000.00 in connection with the ownership of a stock interest in Antilla Sugar Estates. All of the claimants herein have been nationals of the United States at all times pertinent to the claim.

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.

Evidence of record discloses that Certificate No. NY501 for one share of stock in Antilla Sugar Estates was issued on February 5, 1932 to David P. Klinedinst, late father of the claimants herein, who died in 1940. Under the terms of his will, the entire income from his estate was bequeathed to his wife, Mary Moulson Klinedinst, during her life, with the right to use the principal if necessary for her support. The corpus of the estate not consumed by decedent's wife was to pass upon her death, after payment of certain legacies, to the five claimants herein in equal shares. Mary Moulson Klinedinst, a national of the United States at all times pertinent hereto, died in 1962, not having disposed of the share of stock in Antilla Sugar Estates during her lifetime. Under their father's will, all rights and interests with respect to this share of stock passed to the five claimants in equal shares.

The claim is based upon asserted ownership of two shares of stock in Antilla Sugar Estates. However, the second share is found to have been issued to Mary M. Klinedinst, and accordingly is dealt with as a part of the subject matter of Claim of David M. Klinedinst, Executor, Estate of Mary Moulson Klinedinst, Deceased, Claim No. CU-0713.

Antilla Sugar Estates was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including "(B) 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."

On October 13, 1960, the Government of Cuba published Law 890 in its Official Gazette, which listed Antilla Sugar Estates as nationalized. Accordingly, the Commission finds that Antilla Sugar Estates was nationalized by the Government of Cuba on October 13, 1960, and concludes that as a result of such nationalization claimants suffered a loss within the meaning of Title V of the Act.

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.

Claimants have submitted no evidence as to the value of their share of stock. However, a balance sheet for Antilla Sugar Estates as of September 30, 1957 appears on page 2495 of the 1959 edition of Moody's Industrial Manual, and reflects the following:

Assets

Cash		\$ 281,010
Accts. receiv., net		33,807
Sugar sold		4,350,966
Raw sugar unsold		465,725
Molasses		<u>166,749</u>
Total current		\$ 5,298,257
Plant, R.R., etc.	\$8,504,839	
Less Depreciation	<u>5,982,870</u>	2,521,969
Lands, etc.		2,529,636
Supplies, etc.		767,564
Future crop exp.		329,292
Grow. cane, etc.		14,818
Prepayments		76,596
Other assets		7,711
Investment		<u>68,600</u>
Total		\$11,614,443

Liabilities

Accounts payable		\$ 287,424
Secured advances		171,813
Ship. exp. res.		17,602
Accruals		152,774
Cuban prof. taxes		248,153
Special fund		106,290
Planters crop pay.		528,533
Deb. redemp., etc.		<u>18,648</u>
Total current		\$ 1,531,237
Deferred income		268
Com. stock (\$100)		2,440,000
Earned surplus		<u>7,642,939</u>
Total		\$11,614,443

In the absence of evidence as to value other than the balance sheet set forth above, the Commission finds the book value as determined therefrom to be the most appropriate method of valuation of the enterprise. It is noted that the correct total of all liabilities as shown in the balance sheet is \$11,614,444, or \$1.00 more than indicated, and that the statement fails to balance to that extent. The difference, however, is insignificant. Deducting from the total value of the assets all those liabilities which would accrue to creditors (shown in the balance sheet as current liabilities), the

Commission finds the book value of the enterprise to have been \$10,083,206.00. With 24,400 shares of capital stock outstanding, the value per share of stock was \$413.25.

Accordingly, the Commission finds that claimants, as owners in equal shares of one share of stock in Antilla Sugar Estates, each suffered a loss in the amount of \$82.65 within the meaning of Title V of the Act, as a result of the nationalization of Antilla Sugar Estates by the Government of Cuba on October 13, 1960.

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 MARY ELLEN K. ANDERSON 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 Eighty-two Dollars and Sixty-five Cents (\$82.65) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement;

the Commission certifies that DAVID M. KLINEDINST 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 Eighty-two Dollars and Sixty-five Cents (\$82.65) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement;

the Commission certifies that ELIZABETH K. MCGAVRAN 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 Eighty-two Dollars and Sixty-five Cents (\$82.65) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement;

the Commission certifies that RUTH K. PHILLIPS, 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 Eighty-two Dollars and Sixty-five Cents (\$82.65) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement; and

the Commission certifies that THOMAS JOHN KLINEDINST 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 Eighty-two Dollars and Sixty-five Cents (\$82.65) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 12 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).)