

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

IN THE MATTER OF THE CLAIM OF

GEORGE F. BAKER, III

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1017

Decision No. CU
3527

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 GEORGE F. BAKER, III, and is based upon the asserted loss of \$43,626.13, sustained in connection with the ownership of a stock interest in Cuban Bagasse Products, S.A. Claimant has been a national 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.

The record contains stock certificates Nos. 176 through 181 issued to the claimant on June 18, 1959 for 5300 shares of capital stock in Cuban Bagasse Products, S.A. The record also contains a confirmation from claimant's broker disclosing the date of acquisition of the subject shares and the cost thereof. On the basis of all the evidence of record, including the foregoing certificates and confirmation, the Commission finds that the claimant owned, continuously from the date of loss to the presentation of this claim, 5300 shares of the capital stock issued by Cuban Bagasse Products, S.A.

The record discloses that Cuban Bagasse Products, S.A., was intervened on August 3, 1960, pursuant to a Resolution of the "Industrialization Department of the National Institute of the Agrarian Reform" dated July 21, 1960. This corporation 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.)

The Commission concludes that as a result of the intervention by the Government of Cuba of Cuban Bagasse Products, S.A., claimant 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.

Claimant submitted a 1959 balance sheet which reflects the following:

PRODUCTOS CUBANOS DE BAGAZO, S.A.
(CUBAN BACASSE PRODUCTS, S.A.)

BALANCE SHEET

December 31, 1959

A S S E T S

Current Assets:

Cash in Banks and on Hand	\$ 1,655.38
Accounts and Notes Receivable:	
Customers (less allowance for doubtful receivables, 1959, \$5,971.42)	289,061.16
Less Accounts and Notes Discounted	<u>158,522.89</u>
	130,538.27
Accounts Receivable-Others	12,711.25
Inventories	289,013.47
Officers and Employees Accounts	3,614.78
Deposits	11,168.50
Prepaid Expenses and Accruals	<u>56,124.35</u>
Total Current Assets	\$ <u>504,826.00</u>

A S S E T S

<u>Advances on Account of Bagasse</u>	\$ 15,920.38
<u>Investments In and Advances to Subsidiaries:</u>	\$ 111,865.27
<u>Fixed Assets:</u>	
Property, Plant and Equipment	\$1,662,243.00
<u>Less:</u>	
Allowance for Depreciation	119,481.15
Total Fixed Assets	<u>\$1,542,761.85</u>
<u>Deferred Charges:</u>	
Organization and Development Expenses	\$1,171,738.23
<u>Less:</u>	
Amortization Accumulated from July 1, 1958	104,439.51
Total Deferred Charges	<u>\$1,067,298.72</u>
TOTAL ASSETS	<u>\$3,242,672.22</u>

LIABILITIES AND CAPITAL

<u>Current Liabilities:</u>	
Loans Payable	\$ 59,189.70
Accounts and Notes Payable-Suppliers	159,263.37
Accounts Payable-Others	91,911.10
Officers and Employees Accounts	2,540.15
Merchandise Pledged to be Paid	11,409.20
Letters of Credit to be Paid	16,700.00
Accrued Expenses	63,208.03
Total Current Liabilities	\$ <u>404,221.55</u>
<u>Deposit Option on Shares</u>	\$ 25.00
<u>Long Term Debts:</u>	
Mortgage on Land - 6% -, 1958 - 1962	\$ 3,750.00
Long Range Obligations	6,034.00
Mortgage Bonds - 6% -, 1959 - 1968	1,000,000.00
Total Long Term Debts	\$ <u>1,009,784.00</u>

LIABILITIES AND CAPITAL

Capital:

Authorized - 1959, 480,000 common shares
of \$5.00 par value each
Issued and Outstanding - 1959, 364,609 shares;
1958, 293,000 shares \$1,823,045.00

More:

Premium and (Discount) on Shares Issued 74,450.00
\$1,897,495.00

Less:

Net Lost for the Period from August 26
to December 31, 1959 68,853.33
\$1,828,641.67

TOTAL LIABILITIES AND CAPITAL \$3,242,672.22

It appears, however, that the item of "Organization and Development Expenses," carried as \$1,171,738.23 on the books, should not be considered in its entirety as an asset for purposes of certification of loss. The Commission has examined the breakdown of this item in footnotes appended to the previous year's balance sheet and determines that the allowable organization and development expenses are:

Shares issued for services	\$128,700.00
Tax	13,193.90
Deed of constitution	353.40
Samples and experimental production	107,987.94

Extraordinary expenses:

Machinery deficiencies, plant breakdowns and resulting waste of substandard initial production	101,489.08
	<u>\$351,724.32</u>

Less 20% amortization (10% per year)	70,344.86
	<u>\$281,379.46</u>

Trademarks, patents and rights	338.00
	<u>\$281,717.46</u>

Thus, the calculation of net worth of the Cuban entity is as follows:

Total Assets (adjusted by subtracting all organization and development expenses, except those referred to in the preceding paragraph)	\$2,457,090.96
Less current liabilities	<u>1,414,030.55</u>
Net Worth	\$1,043,060.41

The Commission finds, based upon the evidence of record, that Cuban Bagasse Products, S.A. had 364,609 shares of common stock outstanding on the date of its nationalization and concludes that the dollar loss sustained in connection with the ownership of a common stock interest in Cuban Bagasse Products, S.A. was \$2.8607 per share of common stock.

Accordingly, in the instant claim, the Commission finds that claimant, GEORGE F. BAKER, III, as holder of 5,300 shares of common stock, suffered a loss in the amount of \$15,161.70 within the meaning of Title V of the Act, as a result of the intervention by the Government of Cuba of Cuban Bagasse Products, S.A. on August 3, 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.)

The Commission therefore concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that GEORGE F. BAKER, III sustained 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 Fifteen Thousand One Hundred Sixty-one Dollars and Seventy Cents (\$15,161.70) with interest thereon at 6% per annum from August 3, 1960 to the date of settlement.

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

FEB 19 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 claimant established 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).)