

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

IN THE MATTER OF THE CLAIM OF

JACK CLAREMAN AND BENET POLIKOFF,
EXECUTORS OF THE ESTATE OF
MONTGOMERY CLIFT, DECEASED

Claim No. CU -1385

Decision No. CU **3488**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Polikoff and Clareman

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JACK CLAREMAN AND BENET POLIKOFF, EXECUTORS OF THE ESTATE OF MONTGOMERY CLIFT, DECEASED, for \$16,985.00 based upon the asserted ownership and loss of a stock interest in Colon Independent Trading Corporation. The decedent and residuary legatees of his estate have been nationals of the United States at all times pertinent to this claim.

This is the first claim involving Colon Independent Trading Corporation. The Commission notes that several other claims have also been filed with it by other stockholders; thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

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.

This claim is based upon 135 shares of 6% cumulative preferred stock and 250 shares of common stock of Colon Independent Trading Corporation, a Cuban corporation.

Claimants have submitted original stock certificates in the name of the decedent, Montgomery Clift, one certificate in the amount of 135 preferred shares and two certificates in the aggregate amount of 250 shares of common stock, all certificates issued on March 27, 1958. Letters Testamentary issued to claimants in the estate of the decedent.

The Commission finds on the basis of evidence of record that the decedent was the owner of 135 shares of preferred stock of Colon Independent Trading Corporation and 250 shares of common stock of Colon Independent Trading Corporation, a corporation existing under the laws of Cuba.

On August 30, 1960, the Government of Cuba published in its Official Gazette Resolution No. 19103 which listed as intervened on September 1, 1960 Colon Independent Trading Corporation. Accordingly, the Commission finds that Colon Independent Trading Corporation was intervened by the Government of Cuba on September 1, 1960.

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 interest taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant.

Claimants have stated the loss to be \$16,985.00.

Claimants submitted a balance sheet for Colon Independent Trading Corporation for June 30, 1959. However, there was available to the Commission a later balance sheet for September 30, 1959 which reflects the following:

COLON INDEPENDENT TRADING CORPORATION

B A L A N C E S H E E T

September 30, 1959

A S S E T S

Current Assets

Cash in Banks and on Hand		\$	79,027.31
Receivable			
Customers' Notes	\$1,704,385.69		
Company's Pignorations	24,356.20		
Other Receivable	<u>7,283.02</u>		
	\$1,736,024.91		
Less: Reserve for Doubtful Accounts	<u>46,433.19</u>		1,689,591.72
Repossessions (14 Units at book value)			10,849.82
Deposit - Tax Stamp and Postage Machines			<u>800.00</u>
Total Current Assets			\$1,780,268.85

Fixed Assets

Furniture and Fixtures	\$32,185.85		
Less: Depreciation Res.	<u>13,775.01</u>	\$	18,410.84
Automobiles	\$14,683.62		
Less: Depreciation Res.	<u>6,051.41</u>		
		<u>8,632.21</u>	27,043.05

Deferred Charges

Organization Expenses			
(Amortized \$2,587.36)		\$	1,153.40
Office Improvements			
(Amortized \$13,099.68)		19,875.62	
Advanced Rent		<u>3,456.00</u>	<u>24,485.02</u>

Total \$1,831,796.92

L I A B I L I T I E S

Current Liabilities

The Royal Bank of Canada - Loan - Due October 20, 1959	\$	100,000.00
The Royal Bank of Canada		496,514.06
(Collateral Loan guaranteed by Notes		
Pledged amounting to \$622,204.41)		
Accounts Payable		<u>13,848.92</u>

Total Current Liabilities \$ 610,362.98

Reserve

Customers

Amounts withheld for

Guarantees

\$164,712.12

Cash

56,344.50

\$221,056.62

Collection Fees

14,835.88

Capital and Profit Taxes

2,161.14

Law #40, 1959

5,947.56

\$ 244,001.20

240,689.47

Deferred Income

N E T W O R T H

Capital issued

Preferred shares

\$750,000.00

Common shares

20,000.00

\$770,000.00

Less: Treasury Stock

203,600.00

\$566,400.00

Surplus

Balance, July 1, 1959

\$162,775.87

Net Profit for the
Three Months

7,567.40

170,343.27

736,743.27

Total

\$1,831,796.92

The record indicates that Colon Independent Trading Corporation authorized and had outstanding at the time of loss two classes of stock -- (1) Preferred Stock of \$100.00 par value, and (2) Common Stock of \$1.00 par value. Unfortunately, the claimant was unable to furnish a copy of the charter and by-laws of the afore-mentioned enterprise since they were seized by the Cuban Government. It appears, however, that various financial statements for the corporation indicate the rate of interest on the preferred stock as 6%. These include the Statements of Operating Earnings of the corporation for December 31, 1954 and March 31, 1955, as well as the Balance Sheets for December 31, 1953, March 31, 1954, and June 30, 1954.

Although claimants also refer to the preferred stock as cumulative, no reference is made to the stock as such in any of the Balance Sheets. It is particularly noted that in the latest Balance Sheet presented, namely, the one of September 30, 1959, there was no dividend earmarked for payment to preferred stockholders of the undeclared dividends for the preceding three years. Nevertheless, the record reflects that the preferred stock was carried on the claimants' decedent's books as 6% cumulative, and that these books were audited by certified public accountants.

The Commission finds, in view of all the evidence, that the stock should be treated as 6% cumulative, and that the dollar loss sustained in connection with ownership of preferred stock is \$118.00 per share for each of the 5,464 shares outstanding as of the time of loss -- \$100.00 par value plus three years cumulative dividends at 6%.

There were 20,000 shares of common stock outstanding at the time of loss. In arriving at the value of a share of common stock the Commission considered the following items from the September 30, 1959 balance sheet:

Assets (excluding non-allowable organization expenses)		\$1,830,643.52
Current Liabilities	\$610,362.98	
Reserve	244,001.20	
Deferred Income	<u>240,689.47</u>	<u>1,095,053.65</u>
Net Worth		\$ 735,589.87

The Commission therefore finds that after deduction of \$644,752.00 as the value of the preferred stock, a net book value of \$90,837.89 was available for distribution at the time of loss among the 20,000 shares of common stock. Thus the net book value per share of common stock was \$4.0418.

Accordingly, in the instant claim, the Commission finds that claimants, JACK CLAREMAN AND BENET POLIKOFF, EXECUTORS OF THE ESTATE OF MONTGOMERY CLIFT, DECEASED, suffered a loss in the amount of \$16,940.45, including \$15,930.00 for 135 shares of preferred stock and \$1,010.45 for 250 shares of common stock, within the meaning of Title V of the Act, as a result of the intervention of Colon Independent Trading Corporation by the Government of Cuba on September 1, 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 JACK CLAREMAN AND BENET POLIKOFF, EXECUTORS OF THE ESTATE OF MONTGOMERY CLIFT, 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 Sixteen Thousand Nine Hundred Forty Dollars and Forty-five Cents (\$16,940.45) with interest thereon at 6% per annum from September 1, 1960 to the date of settlement.

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

JAN 23 1969

Leonard v. B. Sutton

~~Leonard v. B. Sutton, Chairman~~

Theodore Jaffe

~~Theodore Jaffe, Commissioner~~

Sidney J. Jaffe

~~Sidney J. Jaffe, 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).)