

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

IN THE MATTER OF THE CLAIM OF

SIDNEY ZACHARIAS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1844

Decision No. CU -1942

AMENDED PROPOSED DECISION

By Proposed Decision dated May 29, 1968, the Commission denied this claim for claimant's failure to meet the burden of proof in that he failed to establish ownership by a national of the United States of rights and interests in property which was lost as a result of nationalization, expropriation, intervention or other taking by the Government of Cuba.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, it is ORDERED that the Proposed Decision be and it is hereby amended to read as follows:

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

This claim is presented for an interest in 1,300 shares of common stock of Havana Lithographing, purchased in 1961 and 1962. Claimant has submitted 13 stock certificates, representing 100 shares each. The certificates representing the shares in question are Nos. CLHC 24741, CLHC 25093, CLHC 26406, CLHC 26407, CLHC 26515, CLHC 26516, CLHC 26518, CLHC 26519 and CLHC 27459 through CLHC 27463.

All of the certificates are registered in the name of SIDNEY ZACHARIAS, and the Commission finds, on the basis of the record, that claimant purchased 200 shares on April 5, 1961 for a consideration of \$106.00, 200 shares on August 23, 1961 for a consideration of \$106.00, 200 shares on October 9, 1961, for a consideration of \$106.00, 200 shares on October 18, 1961, for a consideration of \$106.00, and 500 shares on December 19, 1962, for a consideration of \$135.00.

The record discloses that the Havana Lithographing Company was nationalized by Cuban Law 890 published in the Cuban Official Gazette on October 13, 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).

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960 and claimant did not acquire the subject securities until the dates specified above in 1961 and 1962. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant purchased them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission

has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$559.00 (the price he paid) as a result of the nationalization of the Havana Lithographing Company 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).

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum

<u>ON</u>	<u>FROM</u>
\$106.00	April 5, 1961
106.00	August 23, 1961
106.00	October 9, 1961
106.00	October 18, 1961
135.00	December 19, 1962

the dates on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SIDNEY ZACHARIAS succeeded to and 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 Five Hundred Fifty Nine Dollars (\$559.00) with interest at 6% per annum from the respective dates of purchase to the date of settlement.

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

JUL 24 1968

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 establishes retention of the securities or 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).)

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

IN THE MATTER OF THE CLAIM OF

SIDNEY ZACHARIAS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1844

Decision No. CU

1942

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 SIDNEY ZACHARIAS, and is based upon the asserted loss of \$546.00, sustained in connection with the ownership of a stock interest in Compania Litografica de la Habana, S. A. (Havana Lithographing Company), hereinafter referred to as Havana Lithographing. Claimant has been a national of the United States since his birth in the United States.

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 504 of the Act, provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "National of the United States" to mean a natural person who is a citizen of the United States. The term does not include aliens.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. 531.6(d) (Supp. 1967).)

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

On October 13, 1960, the Government of Cuba published Law 890 in its Official Gazette, which listed as nationalized Compania Litografica de la Habana, S. A. Accordingly, the Commission has found that Havana

Lithographing was nationalized by the Government of Cuba on October 13, 1960, and that stockholder interests in the enterprise were taken on that date. (See Claim of Central West Company, Claim No. CU-3440.)

The record discloses that claimant purchased 1,300 shares of common stock of Havana Lithographing in 1961 and 1962. The certificates representing the shares in question are Nos. CLHC 24741, CLHC 25093, CLHC 26406, CLHC 26407, CLHC 26515 through CLHC 26519 and CLHC 27459 through 27463.

By Commission letter of March 28, 1968, it was suggested that claimant submit evidence to establish the identity and United States nationality of the owner or owners of said shares on October 13, 1960 (the date of loss) and continuously thereafter to the date of claimant's acquisition in 1961 and 1962.

However, no evidence in response to this correspondence has been received to date.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish that the subject shares were owned by a national of the United States on the date of loss, and that the resulting claim was continuously so owned until the date of filing with the Commission.

Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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).)

CU- 1753