

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

IN THE MATTER OF THE CLAIM OF

AUGUSTUS P. LORING, ALBERT E. WADSWORTH,
ANGUS M. IRVINE and SUMNER PINGREE, JR.,
EXECUTORS OF THE ESTATE OF
SUMNER A. PINGREE, DECEASED

Claim No. CU -2275

Decision No. CU 5930

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Bingham, Dana & Gould
By Walter D. Malcolm, Esq.

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 AUGUSTUS P. LORING, ALBERT E. WADSWORTH, ANGUS M. IRVINE and SUMNER PINGREE, JR., EXECUTORS OF THE ESTATE OF SUMNER A. PINGREE, DECEASED, in the amount of \$5,671,236.00 based upon an asserted loss in connection with a stock ownership in a Cuban corporation. SUMNER A. PINGREE, who died testate on February 18, 1965, had been a national of the United States since birth and all of his heirs and trust beneficiaries have been nationals 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.

On the basis of evidence of record, the Commission finds that SUMNER A. PINGREE was the owner of 426,313 shares of the capital stock of Central Ermita, S.A. from before 1960 to the time of his death and the claimants herein, as executors of his estate, have been the holders of those shares to the present time.

The record discloses that Central Ermita was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 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 that an American stockholder is entitled to file claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) Therefore, claimants are entitled to file this claim.

Central Ermita was incorporated in Cuba in 1931 and was engaged in the growing of sugar cane and the manufacture of raw sugar, and blackstrap molasses. The properties owned by the company included a sugar mill, 311.690 caballerias of land (1 cab = 33.162 acres), railroad, electric plant, a mill town with residences for the employees, stores, theater, and water supply

system. The authorized capital stock was 600,000 shares of common stock having a par value of \$5.00 per share, of which 485,150 were outstanding.

The value of Central Ermita, S.A. on August 6, 1960 is asserted to have been \$6,455,589.72 and in support thereof claimants have submitted an appraisal made in 1961, affidavits of Central Ermita's Controller and General Manager, survey maps and Cuban resolutions affecting the company. The appraisal was prepared by Luis Parajon who was personally acquainted with the Ermita property and describes each item of machinery with its capabilities and each building with its dimensions and material of construction. Other items not contained in the appraisal were irrigation equipment, a DC-2 Caterpillar tractor, 2 Willys Jeeps and a Willys Jeep Station Wagon which had been loaned to the National Institute of Agrarian Reform but had not been returned or compensated for when Ermita was nationalized. A description of these items and their value is set forth in affidavits of company officials.

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.

On the basis of the entire record, the Commission finds the value of the physical assets of Central Ermita, S.A. on August 6, 1960 as follows:

Lands and Cultivations		\$2,745,144.72
Cane Handling Equipment		53,400.00
Milling Equipment		336,300.00
Steam Generating Plant		273,750.00
Clarification Equipment		107,900.00
Evaporating Plant		104,000.00
Vacuum Pans, Condensers & Condensing Equipment		139,200.00
Crystallizers		98,330.00
Centrifugals		133,000.00
Sugar Handling Equipment		16,015.00
Factory Piping		120,000.00
Pumps, Air Compressors & Vacuum Pumps		78,050.00
Electric Motors		55,000.00
Electric Plant		297,650.00
Storage Tanks		75,800.00
Machine Shop Equipment		45,000.00
Carpenter Shop Equipment		5,600.00
Water Supply System		30,000.00
Rolling Stock		496,510.00
Railroad Lines, Bridges & Culverts		405,000.00
Factory Buildings		313,540.00
Batey Buildings		496,400.00
Equipment Loaned to INRA - Depreciated Values		
Irrigation Equipment	\$13,500.00	
DC-2 Tractor	3,000.00	
2 Willys Jeeps	2,800.00	
Willys Jeep Station Wagon	<u>2,100.00</u>	<u>21,400.00</u>
	Total	\$6,446,989.72

Although there are no accounting records of Ermita available, claimants have established that the quick assets of Ermita were more than sufficient to meet any liabilities. However, evidence of record shows and the Commission finds that Ermita was owed the sum of \$170,000.00 by Hacienda San Andres, S.A. on the date of loss. Thus the total loss sustained by the Cuban corporation was \$6,616,989.72 and the loss per share for each of the 485,150 shares of common stock held in Central Ermita, S.A. was \$13.6391.

Accordingly, the Commission finds that claimants, as holders of 426,313 shares of common stock of Central Ermita, S.A. succeeded to and suffered a loss as a result of the taking of the corporation's assets, by the Government of Cuba, in the amount of \$5,814,525.64 within the meaning of Title V of the Act.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof. (See Claim of Eileen M. Smith, Claim No. CU-3038.)

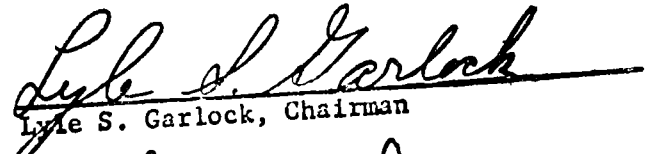
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

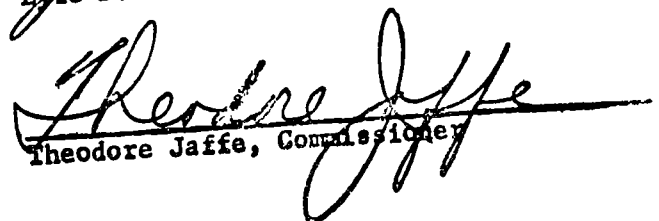
CERTIFICATION OF LOSS

The Commission certifies that AUGUSTUS P. LORING, ALBERT E. WADSWORTH, ANGUS M. IRVINE and SUMNER PINGREE, JR., EXECUTORS OF THE ESTATE OF SUMNER A. PINGREE, DECEASED, succeeded to and suffered a loss, as a result of the 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 Million Eight Hundred Fourteen Thousand Five Hundred Twenty-five Dollars and Sixty-four Cents (\$5,814,525.64) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

28 OCT 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: These claimants are subjects of another certification of loss in CU-2269 and CU-2276 involving asserted losses not covered under this Proposed Decision.

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 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).)