

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

IN THE MATTER OF THE CLAIM OF

MARTIN E. POLINGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3412

Decision No. CU 5110

PROPOSED DECISION

Claimant, MARTIN E. POLINGER, who owned stock interests in Vertientes-Camaguey Sugar Co., the Cia. Azucarera Atlantica del Golfo, Trans-Cuba Oil Company and Havana Lithographing Company, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decisions entitled Claim of Ruth Anna Haskew (Claim No. CU-0849), Claim of Helen M. Drye (Claim No. CU-0807), Claim of D. R. Wimberly (Claim No. CU-3417) and Claim of Central West Company (Claim No. CU-3440), which we incorporate herein by reference, we held that the properties owned by these Companies were nationalized or otherwise taken by the Government of Cuba on August 6, 1960 (Vertientes and Atlantica), November 23, 1959 (Trans-Cuba), and October 13, 1960 (Havana Lithographing), and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of Vertientes as \$46.3946, Atlantica as \$34.056, Trans-Cuba as \$.1198 and Havana Lithographing as \$2.51.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Haskew, Drye, Wimberly and Central West decisions and that he was an American national at the requisite times.

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.

On the basis of evidence of record, the Commission finds that claimant acquired certain shares of stock by purchase on the dates and for the considerations shown below:

200 Vertientes on February 17, 1961 for \$618.00

200 Atlantica on April 19, 1961 for \$516.00

1500 Trans-Cuba on April 27, 1961 for \$405.00

500 Havana Lithographing on May 15, 1961 for \$463.75

1000 Havana Lithographing on December 11, 1961 for \$458.75

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 losses occurred on November 23, 1959, August 6, 1960 and October 13, 1960. In similar cases, claimants have 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 acquired 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

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claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

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.

The Commissions finds that claimant, as an assignee by purchase, acquired the claims for the losses sustained by the assignors of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to the actual consideration he paid for these shares, except as to the Trans-Cuba shares which had a lesser value on the date of purchase, specifically \$179.70.

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 from the dates below, on which claimant acquired these claims, to the date on which provisions are made for the settlement thereof, as follows:

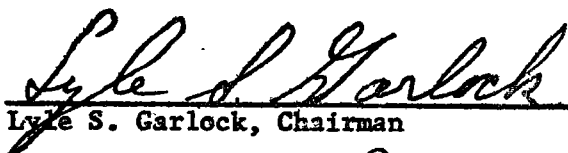
<u>FROM</u>	<u>ON</u>
February 17, 1961	\$ 618.00
April 19, 1961	516.00
April 27, 1961	179.70
May 15, 1961	463.75
December 11, 1961	458.75
	<u>\$2,236.20</u>

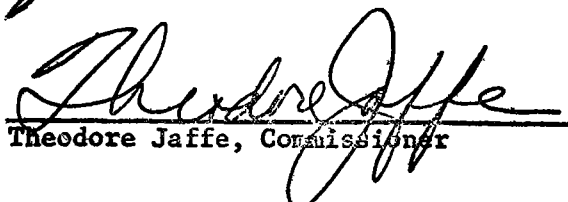
CERTIFICATION OF LOSS

The Commission certifies that MARTIN E. POLINGER 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 Two Thousand Two Hundred Thirty-six Dollars and Twenty Cents (\$ 2,236.20) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

JUL 22 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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 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].)