

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

IN THE MATTER OF THE CLAIM OF

HENRIETTA MAE SIEGEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3478

Decision No. CU - 6283

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 HENRIETTA MAE SIEGEL based upon an interest in common stock issued by the Guantanamo Sugar Company. 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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to August 6, 1960, has been the owner of 100 shares of common stock of Guantanamo Sugar Company.

The record discloses that the Guantanamo Sugar Company 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 the State of New Jersey but less than 50% of its outstanding capital stock has been owned at all times pertinent hereto by nationals of the United States. Thus the corporation does not qualify as a corporate "national of the United States" which is 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. Therefore claimant is entitled to file this claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Guantanamo Sugar Company was engaged in the growing of sugar cane and the manufacture of raw sugar and blackstrap molasses along with cattle raising. The company owned three sugar centrals, Soledad, Isabel and Los Canos. It also had a wholly-owned subsidiary known as Compania Agricola Del Valle S.A.C. and owned 8,140 shares of the total of 9,989 shares of Guantanamo Railroad Company, both incorporated under the laws of Cuba. The Guantanamo Sugar Company had an authorized capital stock of 410,040 shares all of which had been issued.

Although Guantanamo Sugar Company does not qualify as a national of the United States, it has submitted a claim (Claim No. CU-2683) on behalf of certain stockholders. In connection with this claim, the company submitted evidence of the value of the company and its properties, asserting that the total value of its properties taken by the Government of Cuba amounted to \$17,603,591.06.

CU-3478

The claimed losses were:

Land	\$ 392,752.15
Buildings	6,270,000.00
Equipment and machinery	2,019,700.00
Stock, Guantanamo Railroad	820,171.19
Stock, Cia. Agricola Del Valle	<u>8,100,967.72</u>
	\$17,603,591.06

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.

Guantanamo Sugar Company

The record concerning the Guantanamo Sugar Company contains copies of balance sheets for 1957, 1958 and 1959; an appraisal of its land, buildings, the three sugar mills at Soledad, Isabel and Los Canos, the office in the city of Guantanamo and rolling stock operated by the Guantanamo Railroad Company, and an appraisal of its subsidiary Cia. Agricola Del Valle. The amount of loss asserted for this company is for the fixed assets as set forth in the appraisals submitted which are dated August 15, 1960.

The balance sheets are consolidated with Guantanamo's Cuban subsidiary,

Cia. Agricola Del Valle, and the latest for the period ending September 30, 1959 reflects the following:

ASSETS

Current Assets

Cash	\$1,541,762.00	
U.S. Treasury Bills, cost	490,163.00	
Accrued interest receivable	10,042.00	
Accounts receivable	485,765.00	
Estimated balance receivable, molasses	203,115.00	
Sugar on hand	<u>2,879,604.00</u>	
Total Current Assets		\$5,610,451.00

Other Assets

Supplies & spare parts	\$ 412,203.00	
Cultivation expenditures, future crop	251,351.00	
Cane planting, amortized	126,830.00	
Advances to cane growers	26,311.00	
Livestock	116,190.00	
Western Railways of Cuba, stock	1.00	
Guantanamo Railroad Company stock	362,309.00	
Lands	1,477,706.00	
Buildings, machinery & equipment	1,445,287.00	
Prepaid taxes & expenses	<u>160,594.00</u>	
Total Other Assets		<u>\$4,378,782.00</u>

Total Assets \$9,989,233.00

LIABILITIES

Current Liabilities

Bank Loans	\$2,095,000.00	
Accounts payable & accruals	654,064.00	
Provisions for taxes, current	96,224.00	
Dividend payable October 19, 1959	717,570.00	
Reserve for taxes, prior years	<u>176,482.00</u>	
Total Current Liabilities		\$3,739,340.00

Deferred Credits	\$ 8,411.00	
Common Stock (\$1 par value)	410,040.00	
Capital Surplus	2,290,561.00	
Earned surplus	<u>3,540,881.00</u>	<u>6,249,893.00</u>

Total Liabilities and Capital \$9,989,233.00

The appraisal submitted by Guantanamo values the sugar mills and its other properties at \$8,682,452.15 and the properties of Cia. Agricola Del Valle at \$8,100,967.72. The values for Guantanamo are summarized as:

Soledad Mill	\$2,679,500.00
Isabel Mill	1,750,000.00
Los Canos Mill	2,705,000.00
Materials and supplies	800,000.00
Rolling stock	250,000.00
Properties in Guantanamo	105,200.00
Land	358,182.15
Improvements	<u>34,570.00</u>
Total	<u>\$8,682,452.15</u>

The properties of Cia. Agricola Del Valle are valued as:

Land	\$3,142,252.62
Cane stock	2,430,000.00
Pasture	128,127.00
Buildings	1,425,796.10
Equipment & Irrigation installations	434,698.00
Fences, enclosures, etc.	376,360.00
Livestock	163,734.00
Total	<u>\$8,100,967.72</u>

The Commission finds that the values asserted for the lands, buildings, machinery, and equipment of Guantanamo and Agricola Del Valle are fair and reasonable and are substituted in the 1959 Balance Sheet to determine the net worth of the sugar company. Since the Guantanamo Railroad Company is discussed separately, it will not be considered at this time. However, a further adjustment to the 1959 Balance Sheet is made for the valuation of the investment in Western Railways of Cuba (Ferrocarriles Occidentales de Cuba, S.A.) which is carried on the Balance Sheet at \$1.00 although the cost was \$77,120.00. Inasmuch as the Cuban Government forced companies to purchase securities issued by that railroad, the Commission has consistently certified losses based upon ownership of such stock equal to the cost of the stock. (See Claim of Ruth Anna Haskey, Claim No. CU-0849, 1968 FCSC Ann. Rep. 31.) Therefore the Balance Sheet will be adjusted to reflect the value of the Western Railways stock to be \$77,120.00.

In Moody's Industrial Manual, 1961 Volume at page 2120, the printed reference to Guantanamo Sugar Company notes that at the time of the seizure of the company, there were assets in the United States amounting to \$410,000.00. These were not available to the Republic of Cuba. Since there is no evidence to the contrary in the record, that amount will be deducted from the cash assets.

Accordingly, the Commission finds that the assets of Guantanamo Sugar Company, other than its interest in the Guantanamo Railroad Company, on August 6, 1960 consisted of:

CU-3478

Current Assets

Cash	\$1,131,762.00	
U.S. Treasury Bills, cost	490,163.00	
Accrued interest receivable	10,042.00	
Accounts receivable	485,765.00	
Estimated balance receivable, molasses	203,115.00	
Sugar on Hand	<u>2,879,604.00</u>	
Total Current Assets		\$ 5,200,451.00

Other Assets

Supplies and spare parts	\$ 412,203.00	
Cultivation expenditures	251,351.00	
Cane planting	126,830.00	
Advances to cane growers	26,311.00	
Western Railways of Cuba	77,120.00	
Land & improvements	392,752.15	
Buildings, machinery & equipment	8,289,700.00	
Prepaid Taxes & expenses	160,594.00	
Properties of Cia. Agricola Del Valle	<u>8,100,967.72</u>	
Total Other Assets		<u>17,837,828.87</u>
Total Assets		<u>\$23,038,279.87</u>

After deducting the total liabilities of \$3,739,340.00, the Commission finds that the net worth of Guantanamo Sugar Company, excluding its interest in the Guantanamo Railroad Company, on August 6, 1960 was \$19,298,939.87.

Guantanamo Railroad Company

The original claim filed by Guantanamo Sugar Company asserted a loss of \$820,171.19 for the nationalization of Guantanamo Railroad Company by the Government of Cuba, which occurred on August 6, 1960 at the same time as the nationalization of the parent company. That valuation was based upon a balance sheet for April 30, 1960 and the capital and surplus recorded in that balance sheet amounted to \$921,540.66. The original claim, however, asserted an ownership interest of 89% of the outstanding capital stock whereas the parent owned 8,140 shares of the 9,989 shares outstanding or 81.5% of the outstanding capital stock. In addition to the April 30, 1960 balance sheet, the record contains a profit and loss statement, expense records, and a listing of the accounts payable and receivable.

Upon consideration of the entire record, the Commission finds that the most appropriate measure of the value of the corporation at the time of nationalization is the capital and surplus value of \$921,540.66 plus the reserve for contingencies amounting to \$28,524.82 for a total net worth of \$950,065.48.

Therefore, the value at the time of loss for each of the 9,989 shares of outstanding capital stock was \$95.1112 and the value of Guantanamo Sugar Company's interest based upon its ownership of 8,140 shares was \$774,205.17.

The record further establishes that Guantanamo Railroad Company was indebted to Guantanamo Sugar Company at the time of loss in the amount of \$340,974.31. Thus the Commission finds that the Sugar Company's interest in the Railroad totalled \$1,115,179.48.

On the basis of the entire record, the Commission finds that the total value of the assets of Guantanamo Sugar Company, including its stock interests in the Guantanamo Railroad Company, taken by the Government of Cuba was \$20,414,119.35 (\$19,298,939.87 plus \$1,115,179.48). Thus the total loss sustained by the corporation was \$20,414,119.35, and the loss per share for each of the 410,040 shares of common stock held in Guantanamo Sugar Company was \$49.7856.

Accordingly, the Commission finds that claimant, as holder of 100 shares of common stock of Guantanamo Sugar Company, suffered a loss as a result of the taking by the Government of Cuba of the assets of Guantanamo Sugar Company, in the amount of \$4,978.56, within the meaning of Title V of the Act.

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 claim, it is so ordered.

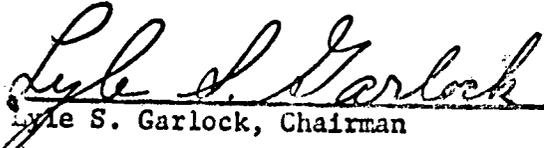
It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

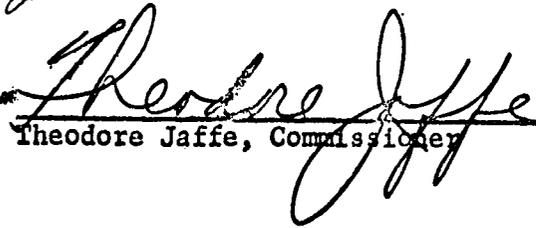
CERTIFICATION OF LOSS

The Commission certifies that HENRIETTA MAE SIEGEL 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 Four Thousand Nine Hundred Seventy-Eight Dollars and Fifty-Six Cents (\$4,978.56) 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

JUL 28 1971


Lyle S. Garlock, Chairman


Theodore 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 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 (1970).)

CU-3478