

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

IN THE MATTER OF THE CLAIM OF

BERTHA R. LINDER,
TRUSTEE U/A DATED
JULY 13, 1940 F/B/O
HENRY I. FILLMAN

Claim No. CU-7373

Decision No. CU-4933

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo: Dewey, Ballantine, Bushby,
Palmer & Wood
By William C. Bush, Esq.

Counsel for claimant: Szold, Brandwen, Meyers & Altman
By Ezra N. Goodman, Esq.

Appeal and objections from a Proposed Decision entered January 6, 1971.
No hearing requested.

Hearing on the record held March 17, 1971.

FINAL DECISION

Under date of January 6, 1971, the Commission issued its Proposed Decision on this claim in which the Certification of Loss was limited pursuant to Section 507(b) of the Act. Since claimant had acquired this claim, based upon shares of stock in the Cuban corporation in question, subsequent to August 6, 1960, the date the claim arose, the Commission found that claimant sustained a loss in the principal amount of \$200.00, representing the consideration actually paid by claimant for the claim.


Counsel for claimant filed objections based upon two principal grounds; namely, (1) that neither the language of Section 507(b) nor the legislative history of the statute provides a valid basis for the retroactive application of the section to transactions that occurred prior to enactment; and (2) that in the absence of clear legislative intent, Section 507(b) must be applied prospectively.

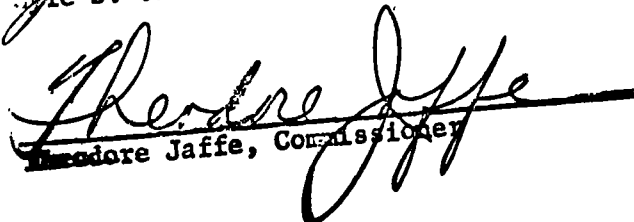
The Commission has consistently interpreted Section 507(b) of the Act as applicable to any claim under the statute acquired by purchase after the date the claim arose and prior to the date of filing with the Commission. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47, cited in the Proposed Decision on this claim.)

Upon consideration of the entire record, the Commission finds no valid basis for altering the decision on this claim previously entered, and therefore affirms the Proposed Decision in all respects.

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

MAR 29 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

BERTHA R. LINDER,
TRUSTEE U/A DATED
JULY 13, 1940 F/B/O
HENRY I. FILLMAN

Claim No. CU-7373

Decision No. CU 1933

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo: Dewey, Ballantine, Bushby,
Palmer & Wood
By William C. Bush, Esq.

PROPOSED DECISION

Claimant, BERTHA R. LINDER, TRUSTEE U/A DATED JULY 13, 1940 F/B/O
HENRY I. FILLMAN, who owned a stock interest in the Cia. Azucarera Atlantica
del Golfo, asserts a claim under Title V of the International Claims Settle-
ment Act of 1949, as amended, against the Government of Cuba because of its
nationalization of said Company.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807
which we incorporate herein by reference), we held that the properties owned
by the Company were nationalized or otherwise taken by the Government of
Cuba on August 6, 1960, 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 \$34.056.

On the basis of evidence in the record in the instant case, the
Commission finds that HENRY I. FILLMAN comes within the terms of the Drye
decision 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 200 shares of Atlantica stock by purchase on November 25, 1960 for a consideration of \$200.00.

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 August 6, 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 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 Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to \$200.00, the actual consideration paid for these shares.

The Commission has decided that in certification 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.)

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 November 25, 1960, the date on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof.

CU-7373

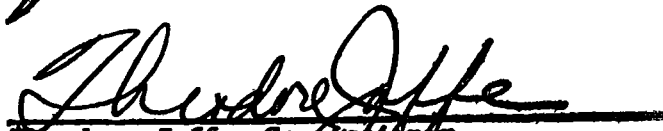
CERTIFICATION OF LOSS

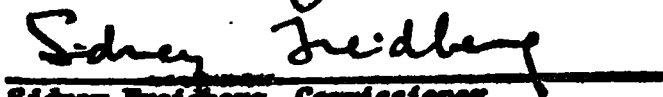
The Commission certifies that BERTHA R. LINDER, TRUSTEE U/A DATED JULY 13, 1940 F/B/O HENRY I. FILLMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Dollars (\$200.00) with interest at 6% per annum from November 25, 1960 to the date of settlement.

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

JUN 3 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 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(c) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)