

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

IN THE MATTER OF THE CLAIM OF

PHILLIP G. GAY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -7407

Decision No. CU-5101

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

AMENDED PROPOSED DECISION

Under date of June 30, 1970, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently new evidence was submitted in support of the claim.

Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that the Proposed Decision be amended as follows:

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 Atlantica del Golfo Sugar Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is allowable 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 claim, the Commission finds that this claimant comes within the terms of the Drye decision; that he was an American national at the requisite times; that he has been the owner of 10,200 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960; and that he suffered a loss in the amount of \$347,371.20 within the meaning of Title V of the Act.

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 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 further finds that claimant acquired additional shares of Atlantica stock on the dates and for the price as follows:

<u>Shares</u>	<u>Date</u>	<u>Amount</u>
5,000	August 21, 1961	\$ 5,300.28
100	December 15, 1961	106.24
800	December 18, 1961	848.24
1,000	December 19, 1961	1,060.24
2,600	January 24, 1962	2,756.24
5,000	January 24, 1962	5,300.48
100	April 2, 1962	106.24
1,000	April 4, 1962	1,060.24
1,100	April 5, 1962	1,166.24
100	April 17, 1962	106.24
100	April 23, 1962	106.24
400	April 24, 1962	424.24
100	April 25, 1962	106.24
2,000	April 26, 1962	2,120.24
2,100	April 26, 1962	2,226.24
800	April 30, 1962	848.24
1,700	May 1, 1962	1,802.24
500	May 2, 1962	530.24
5,000	May 9, 1962	5,300.48
200	April 29, 1964	118.50
500	March 3, 1967	265.00
30,200	Totals	\$31,658.58

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.)

The Commission finds that claimant, upon his purchase of the securities after August 6, 1960, succeeded to the claim 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 \$31,658.58, the actual consideration paid for these shares.

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.)

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, the date on which the loss was sustained or the dates on which claimant acquired claims, to the date on which provisions are made for the settlement thereof:


<u>FROM</u>	<u>ON</u>
August 6, 1960	\$347,371.20
August 21, 1961	5,300.28
December 15, 1961	106.24
December 18, 1961	848.24
December 19, 1961	1,060.24
January 24, 1962	8,056.72
April 2, 1962	106.24
April 4, 1962	1,060.24
April 5, 1962	1,166.24
April 17, 1962	106.24
April 23, 1962	106.24
April 24, 1962	424.24
April 25, 1962	106.24
April 26, 1962	4,346.48
April 30, 1962	848.24
May 1, 1962	1,802.24
May 2, 1962	530.24
May 9, 1962	5,300.48
April 29, 1964	118.50
March 3, 1967	<u>265.00</u>
Total	\$379,029.78

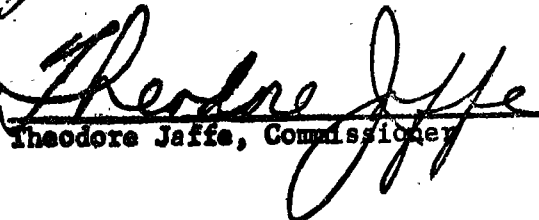
CERTIFICATION OF LOSS

The Commission certifies that PHILLIP G. GAY 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 Three Hundred Seventy-Nine Thousand Twenty-Nine Dollars and Seventy-Eight Cents (\$379,029.78) with interest thereon at 6% per annum from the aforesaid dates to the date of settlement.

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

JUN 23 1971


Philip 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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

PHILLIP G. GAY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No.CU - 7407

Decision No.CU 5101

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

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by PHILLIP G. GAY and is based upon the asserted loss of a stock interest. 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.

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.

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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).)

Claim is based on loss arising from asserted ownership of 35,500 shares of Atlantica del Golfo Sugar Company, 25,300 of which are said to have been purchased subsequent to August 6, 1960, the date of loss for Atlantica.


By Commission letter of March 20, 1968, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of June 5, 1968 and April 30, 1969, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter.


On October 28, 1969, claimant was invited to submit the suggested evidence within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

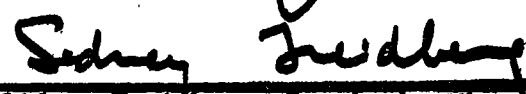
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

JUN 30 1970


L. S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Treiberg, 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).)