

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

IN THE MATTER OF THE CLAIM OF

RALPH E. McILHATTAN  
and  
MILDRED L. McILHATTAN

Claim No. CU - 7683

Decision No. CU - 5796

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.

AMENDED PROPOSED DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, new evidence was submitted in support of this 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 case, the Commission finds that these claimants come within the terms of the Drye decision; that they were American nationals at the requisite times; that they have been the joint owners of 100 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960; and that they suffered a loss in the amount of \$3,405.60 within the meaning of Title V

of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from August 6, 1960, the date of loss, to the date on which provisions are made for the settlement hereof. (See Drye, supra.)

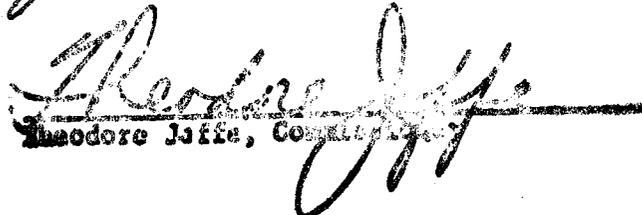
CERTIFICATION OF LOSS

The Commission certifies that RALPH E. McILHATTAN and MILDRED L. McILHATTAN jointly 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 Thousand Four Hundred Five Dollars and Sixty Cents (\$3,405.60) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

APR 21 1971

  
Lyle S. Corlock, 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).)

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**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, Esquire

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 RALPH E. McILHATTAN and MILDRED L. McILHATTAN and is based upon the asserted loss of a stock interest. Claimants stated that they 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.

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.

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) (1969).)

Claim is based on loss arising from asserted ownership of 100 shares of Atlantica del Golfo.

By Commission letter of March 20, 1968, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of May 28, 1968 and January 8, 1969, the Commission made additional suggestions to claimants concerning the submission of supporting evidence in this matter.

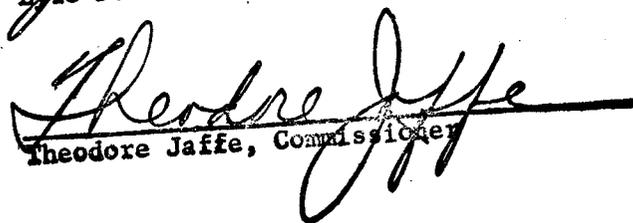
On November 14, 1969, claimants were again invited to submit the suggested evidence within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. A further reminder was sent on April 28, 1970. No evidence has since been submitted.

The Commission finds that claimants have not met the burden of proof in that they have 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

OCT 14 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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).)