

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

IN THE MATTER OF THE CLAIM OF

FRED WYSZKOWSKI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-8068

Decision No. CU-5816

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

By Proposed Decision issued October 28, 1970, the Commission denied this claim for failure of proof. Since then, satisfactory evidence has been submitted and the Proposed Decision is hereby amended.

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 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 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 \$6,811.20 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 thereof. (Drye, supra.)

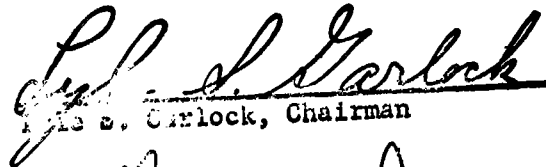
Accordingly the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

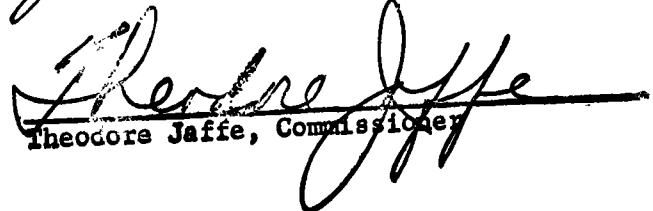
CERTIFICATION OF LOSS

The Commission certifies that FRED WYSZKOWSKI 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 Six Thousand Eight Hundred Eleven Dollars and Twenty Cents (\$6,811.20) with interest at 6% per annum from August 6, 1969 to the date of settlement.

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

DEC 2 1970


J. S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-8380 involving asserted losses not covered under this Proposed Decision.

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, 32 Fed. Reg. 412-13 (1967).)

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

IN THE MATTER OF THE CLAIM OF

FRED WYSZKOWSKI

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

Claim No. CU -8068

Decision No. CU 5816

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 FRED WYSZKOWSKI and is based upon the asserted loss of a stock interest. Claimant has been a national of the United States since his naturalization on November 18, 1946.

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 be 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.

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 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. 8531.6(d) (1969).)

Claim is based on loss arising from ownership of 200 shares of stock of Atlantica del Golfo Sugar Co. Claimant submitted a stock certificate for 100 shares issued to him on May 25, 1966 and another for 100 shares issued to Harris Upham & Co. in 1959. Claimant states he acquired these prior to August 6, 1960.


By Commission letter of December 18, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act, specifically date of purchase and price paid. Thereafter, by letters of January 28, 1969 and March 3, 1969, the Commission made additional suggestions to claimant concerning the submission of support evidence in this matter.

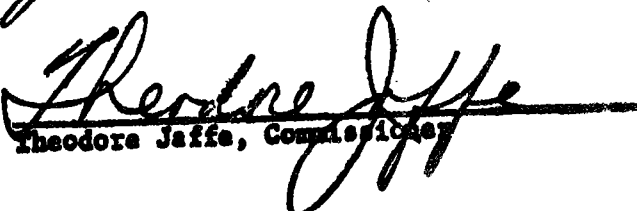
On April 13, 1970 claimant was again invited to submit the suggested evidence. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish date of acquisition and consideration paid for ownership of rights and interest 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 28 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).)

CU- 8068