

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

IN THE MATTER OF THE CLAIM OF:

BARBARA ANN COTTER

Claim No. CU-8251

Decision No. CU

1997

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Michael Duskas, 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 BARBARA ANN COTTER and is based upon an asserted loss sustained in connection with the ownership of a stock interest in Central Violeta Sugar Company, S.A. Claimant has been a national of the United States since her birth in the United States.

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 of 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 all the evidence of record, the Commission finds that the claimant owned, continuously from prior to October 13, 1960 to the presentation of this claim, four (4) shares of the capital stock issued by Central Violeta Sugar Company, S.A., represented by certificate No. CO-4668.

The record discloses that Central Violeta Sugar Company, S.A. was nationalized by Cuban Law No. 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" 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 her ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

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." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard

by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value of the interest owned by claimant in Central Violeta Sugar Company, S.A., the Commission has considered claimant's assertions, a 1959 consolidated balance sheet for the company, as published in Moody's Industrial Manual for 1961 (p.2029), as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$8,612,828 was available for distribution, at the time of loss, among the 283,020 shares of capital stock issued by Central Violeta Sugar Company, S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Central Violeta Sugar Company, S.A. was \$30.4318 per share of the capital stock issued and held at the time of loss. (See Claim of Huntley E. Cox, Claim No. CU-2944.)

Accordingly, in the instant claim, the Commission finds that claimant, BARBARA ANN COTTER, as holder of four (4) shares of capital stock, suffered a loss in the amount of \$121.73 within the meaning of Title V of the Act, as a result of the nationalization of Central Violeta Sugar Company, S.A. by the Government of Cuba on October 13, 1960.

The Commission has decided that in certification of losses on claim 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 therefore concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that BARBARA ANN COTTER sustained 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 One Hundred Twenty-One Dollars and Seventy-Three Cents (\$121.73) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

JUN 19 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-7281.

NOTICE TO TREASURY: The above-referenced security 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 security 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, 32 Fed. Reg. 412-13 (1967).)