

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

IN THE MATTER OF THE CLAIM OF

PAUL M. HEILMAN
THEODORE A. HEILMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0055
Claim No. CU-0306

Decision No. CU
3366

Counsel for claimants:

Rufus King, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, have been presented by PAUL M. HEILMAN, in the total amount of \$385,389.63, and by THEODORE A. HEILMAN, in the amount of \$67,757.97, nationals of the United States at all pertinent times. The claims are based on the asserted loss of a stock interest, improved realty and personalty.

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.

THEODORE A. HEILMAN bases his claim on 794 shares of stock of "La Antillana, Cia. Comercial y de Credito, S.A.", (hereafter referred to as "La Antillana") a Cuban corporation engaged in the importation and distribution of agricultural machinery. PAUL M. HEILMAN bases his claim on 3,510 shares of the same corporation, and a residence, with personalty therein, in Arroyo Arenas, Havana, Cuba.

"LA ANTILLANA"

Evidence of record establishes that La Antillana was authorized a capitalization of \$500,000 divided into \$250,000 for Preferred or Class A stock and \$250,000 for Common or Class B stock. In fact it had issued 800 preferred shares and 3,980 shares. It further appears that there was no substantial difference to be effectuated in this decision. The Commission finds, on the basis of all evidence of record, including certificates submitted, that claimant THEODORE A. HEILMAN owned 794 shares of "La Antillana" and that PAUL M. HEILMAN owned 3,510 shares of "La Antillana".

Further, the Commission finds that "La Antillana" was intervened by the Government of Cuba on August 26, 1960, by Resolution 17928. Thereafter, it was nationalized on October 24, 1960. The Commission holds that claimants suffered a loss within the meaning of Title V of the Act when "La Antillana" was intervened by the Government of Cuba on August 26, 1960.

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.

Claimants have submitted an acceptable balance sheet for "La Antillana" as of June 30, 1960, which reflects the following:

<u>ASSETS</u>	
Cash on Hand and in Banks	9,704.54
Drafts Collectable (Due Us)	94,360.59
Less: Drafts Collectable Discounted	32,715.60
Net	61,644.99
Accounts Receivable, Customers	299,630.61
Accounts Receivable, Various	20,180.53
Less: Reserve for Bad Debts	32,682.04
Net	287,129.10
Installment Contracts	26,109.65
Less: Reserve for Losses on Contracts	2,668.19
Net	23,441.46
Mortgage Bonds Collectable, Discounted	17,092.50
Total Collectables	389,308.05
Merchandise in Inventory	206,650.91
Merchandise in Inventory on Consignment	43,705.54
Total Current Assets	<u>649,369.04</u>
Tools	3,709.77
Shop Equipment	1,810.05
Office Furniture and Fixtures	4,216.42
Rolling Stock	12,653.51
Air Conditioning	5,850.00
Buildings and Grounds	130,056.49
Total Fixed Assets Less Depreciation	<u>158,296.24</u>
Deferred Charges	<u>1,325.74</u>
TOTAL ASSETS	<u>808,991.02</u>

<u>LIABILITIES</u>	
Bank Overdrafts	517.82
Taxes Payable	4,563.21
Drafts Payable	41,195.50
Accounts Payable	186,243.06
Accounts Receivable - Credit Balances	23,981.15
C.D.M. Loans Against Merchandise	43,705.54
Bank Loans with Lien Guarantees	10,107.50
Guarantee Deposits - Dealers	2,394.79
Total Current Liabilities	<u>312,708.57</u>
Long Term Loans	<u>74,543.22</u>
Unearned Interest Charges	3,882.13
Reserve for Sales Promotion	-

LIABILITIES

Units Under Guarantee	1,133.36
Reserve for Losses on Shipments	8,810.49
Total Deferred Charges	<u>13,825.98</u>
TOTAL LIABILITIES	<u>401,077.77</u>

CAPITAL

Shares Issued and in Circulation	478,000.00
Profit & Loss to Date	(8,200.91)
Loss	(61,885.84)
TOTAL CAPITAL	<u>407,913.25</u>
TOTAL LIABILITIES & CAPITAL	<u>808,991.02</u>

The balance sheet enumerates the assets, tangible and intangible and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets, if any, over contractual liabilities represents the owners' equity, or net worth. The same result usually may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. The foregoing balance sheet does not reflect any undivided profit, but reflects that the company was operating at a loss when intervened. The calculation of net worth from said balance sheet is as follows.

Total Assets	\$808,991.02
Less Contractual Liabilities	<u>401,077.77</u>
Net Worth	\$407,913.25

Accordingly, on the basis of the record, the Commission finds that one share of "La Antillana" stock on the date of loss had a value of \$85.3375 and concludes that claimant THEODORE A. HEILMAN suffered a loss in the amount of \$67,757.98 and PAUL M. HEILMAN suffered a loss in the amount of \$299,534.63 as a result of the intervention of "La Antillana" by the Government of Cuba on August 26, 1960.

REAL AND PERSONAL PROPERTY

Claimant PAUL M. HEILMAN has submitted affidavits, statements and certificates to establish that in May 1949, he purchased a property in

Arroyo Arenas, title to which was recorded in "Sociedad Territorial el Dorado, S.A.", all stock of which was owned by PAUL M. HEILMAN. Thereafter, subsequent to claimant's departure from Cuba, the property was taken over by agents of the Government of Cuba, on the afternoon of June 12, 1961, as evidenced by a letter from the caretaker of the property, discussing the incident in detail.

Claimant has asserted the value of this property as \$14,000 for the land and \$46,500 for the residence. The record reflects that the property was purchased for \$24,000, consisting of \$14,000 for about 7,000 square meters of land, and \$10,000 for a garage, servants quarters and like facilities. In 1951 and 1952 claimant built a 2-story residence on the property, consisting of three bedrooms, sitting rooms, library, kitchen and other facilities. Claimant has submitted photographs and affidavits from persons familiar with the property.

On the basis of the entire record the Commission finds that the improved property had a value of \$56,315 on June 12, 1961, when it was taken by the Government of Cuba.

Claimant has submitted a detailed listing of the personal property in the residence at the time of taking. He has valued this at \$25,355, but is unable to supply dates of acquisition or purchase prices for all items. With respect to a number of items, claimant has submitted photographs of items which duplicate those lost in Cuba. On the basis of the entire record the Commission finds that the personal property had a value of \$23,073 on the date of taking.

Accordingly, the Commission concludes that claimant PAUL M. HEILMAN suffered a loss in the amount of \$79,388 within the meaning of Title V of the Act as a result of the taking of his residence and the personalty therein by the Government of Cuba on June 12, 1961.

SUMMARY OF LOSSES

	<u>"La Antillana"</u> (Taken Aug. 26, 1960)	<u>Residence</u> (Taken June 12, 1961)	<u>Personalty</u> (Taken June 12, 1961)	<u>Total</u>
PAUL M. HEILMAN	\$299,534.63	\$56,315.00	\$23,073.00	\$378,922.63
THEODORE A. HEILMAN	67,757.98	--	--	67,757.98

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that PAUL M. HEILMAN 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-Eight Thousand Nine Hundred Twenty-Two Dollars and Sixty-Three Cents (\$378,922.63) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement; and

the Commission certifies that THEODORE A. HEILMAN suffered a loss, as 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 Sixty-Seven Thousand Seven Hundred Fifty-Seven Dollars and Ninety-Eight Cents (\$67,757.98) with interest at 6% per annum from August 26, 1960 to the date of settlement.

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

DEC 11 1968

Leonard v. B. Sutton

~~Leonard v. B. Sutton, Chairman~~

Theodore Jaffe

~~Theodore Jaffe, Commissioner~~

Sidney Judd

~~31~~

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 claimants establish 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(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)