

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

IN THE MATTER OF THE CLAIM OF

MICHAEL WATERSTON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0142

Decision No. CU-4841

AMENDED PROPOSED DECISION

By Proposed Decision issued May 13, 1970, the Commission certified a loss to claimant in the amount of \$170,586.10 based upon the loss of a stock interest in a Cuban corporation and a debt due from that corporation. A portion of the claim for salaries due was denied and part of the sum claimed as a debt was disallowed. Claimant objected and submitted additional evidence in support of the claimed amounts. Accordingly, the Proposed Decision is hereby amended.

In the Proposed Decision, the Commission determined that the net worth of Compania Textil Blumin, S.A. on July 12, 1961 was \$130,866.92 and that the amount owed claimant by that company for merchandise was \$39,719.18. Since claimant was the sole stockholder of Textil Blumin, the total sum of \$170,586.10 was determined to have been his loss. Based upon the additional correspondence and invoices, the Commission now finds that the Cuban enterprise was indebted to claimant in the amount of \$49,871.22 on July 12, 1961 for merchandise unpaid and therefore concludes that claimant suffered an additional loss of \$10,152.04 within the meaning of Title V of the Act as a result of the intervention of Compania Textil Blumin, S.A. on July 12, 1961.

Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed Decision is affirmed.

Claimant has objected to the denial of his claim for salaries due for the period between January 1, 1959 and the date of intervention. Since claimant has stated in a letter to the Commission that this claimed amount was not included in the balance sheets of the enterprise as an account payable, such amount would necessarily be deducted from the net worth of the company. Therefore if a determination of a loss for salaries unpaid could be made, the amount of loss for claimant's stock interests would be decreased by the amount of loss determined for any salary. The Commission concludes that no change should be made in the amount certified for claimant's loss for his stock interest and no finding of a loss for unpaid salaries is made.

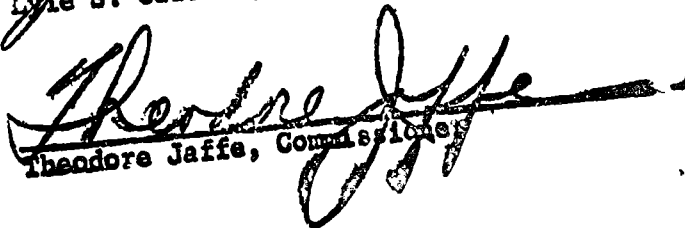
CERTIFICATION OF LOSS

The Commission certifies that MICHAEL WATERSTON 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 One Hundred Eighty Thousand Seven Hundred Thirty-Eight Dollars and Fourteen Cents (\$180,738.14) with interest thereon at 6% per annum from July 12, 1961 to the date of settlement.

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

MAY 12 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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. 50.5(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

MICHAEL WATERSTON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0142

Decision No. CU 4841

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$208,238.17, was presented by MICHAEL WATERSTON and is based upon the asserted loss of a stock interest in a Cuban corporation and a debt due from the corporation. Claimant has been a national of the United States since his naturalization on June 8, 1944.

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.

Claimant has asserted losses as follows:

Stock Interest	\$ 82,000.00
Accumulated Profits	48,866.92
Merchandise shipped to Cia. Textil Blumin	49,371.25
Salaries due from January 1, 1959 to August 14, 1961	<u>28,000.00</u>
	\$208,238.17

Stock Interest

The evidence establishes and the Commission finds that claimant owned all the outstanding stock of Compania Textil Blumin, S.A., a Cuban entity. This corporation was engaged in the retail textile business, and operated two stores on leased property, one known as Blumin Textils at Muralla 360, and one known as El Imperio at Muralla 424, in Havana, Cuba.

By Resolution 4983 of the Cuban Ministry of Labor, issued July 12, 1961, pursuant to Law 647 of November 24, 1959, the intervention of Cia. Textil Blumin, S.A., was effected.

Since Cia. Textil Blumin, S.A. was organized under the laws of Cuba it 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. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest.

(See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann.

Rep. 33.)

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". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence includes a Bank letter of June 22, 1960, concerning its inability to transfer funds; letters of Company officials based upon personal knowledge of Textil Blumin's operations and assets; a Bank letter reflecting liquidation of a loan; claimant's statement that all books and records of Textil Blumin had been left in Cuba; copies of portions of insurance policies (or riders) covering the Company's stock; copies of balance sheets for Textil Blumin as of June 30, 1960 and June 30, 1961; copies of bank statements; and statements from claimant to the Department of State and to the Commission concerning this claim.

On the basis of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown by the balance sheet for Textil Blumin as of June 30, 1961.

That balance sheet shows the following, the Cuban peso being on a par with the United States dollar:

ASSETS

Current Assets:

Permanent Cash in cash registers	\$ 200.00
Cash on Hand	2,943.16
Cash in Bank	77,268.39
Accounts Receivable	1,389.28
Loans receivable	1,092.50
Stock Inventory	73,403.36
Drawings in Antic. of profits	1,000.00
Other debts and credits due	<u>1,835.04</u>

Total Current Assets \$159,131.73

Permanent Assets:

Furniture and Fixtures	\$11,357.17
<u>Less: Reserve for depreciation</u>	<u>3,356.47</u>

Total Permanent Assets 8,000.70

Other Assets:

	<u>Cost</u>	<u>Amortization</u>	<u>Net Value</u>
Improvement on rented property	\$ 7,289.61	\$2,011.76	\$5,277.85
Installations expenditures	17,573.63	7,908.12	9,665.51
Organization expenses	<u>3,713.57</u>	<u>1,671.12</u>	<u>2,042.45</u>

Total Other Assets 16,985.81

TOTAL ASSETS \$184,118.24

LIABILITIES

Current Liabilities:

Tax Payable	\$ 279.92
Accounts Payable	52,431.40
Reserve for electricity consumed	<u>540.00</u>

Total Current Liabilities \$ 53,251.32

CAPITAL

Authorized Capital	\$190,000.00
<u>Less: Stocks to be issued</u>	<u>108,000.00</u>
Stocks in circulation	82,000.00
Surplus	<u>48,866.92</u>

Total Capital 130,866.92

TOTAL LIABILITIES AND CAPITAL \$184,118.24

The record reflects that the item Cash in the balance sheet is supported by copies of bank statements; that a bank loan had been liquidated and that the item Accounts Payable was for merchandise.

The Commission finds that the value of Textil Blumin on July 12, 1961, the date of loss, was \$130,866.92, and therefore claimant suffered a loss in that amount for his stock interest.

Debt

The Commission has held that debts of nationalized or intervened Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Claimant contends that Cia. Textil Blumin, S.A. owed him \$49,371.25 for goods he purchased in New York and sold to the Company, shipping them to Cuba. The President of the Company affirmed that this amount was due the claimant. The Bank letter of June 22, 1960 recited amounts totalling \$39,719.18 for which efforts to transfer same to New York had been unsuccessful. The record is not clear whether this amount had been paid to the Bank for transfer, but it appears that it remained a debt, within the Accounts Payable on the balance sheet.

Detail in support of the difference between \$49,371.25 and \$39,719.18 has not been submitted. Accordingly, the Commission finds that claimant sustained a loss in the amount of \$39,719.18 for a debt due from an intervened Cuban enterprise.

Salary

Claim has been asserted in the amount of \$28,000.00 for salaries said to be due. Claimant estimated this at \$875.00 per month for 31-1/2 months. However, no probative evidence has been submitted in support of this item. Accordingly, the Commission is constrained to and denies this item of claim.

Recapitulation

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Stock Interest in Textil Blumin	\$130,866.92
Debt due from Textil Blumin	<u>39,719.18</u>
	\$170,586.10
	<u><u> </u></u>

The Commission has decided that in certification of losses 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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

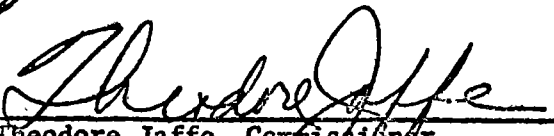
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Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 13 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



Sidney Freidberg, Commissioner

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