

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

IN THE MATTER OF THE CLAIM OF

WILLIAM W. WATERMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 0148

Decision No. CU **3525**

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 WILLIAM W. WATERMAN, and is based upon the asserted loss of \$46,000.00, sustained in connection with the ownership of a stock interest in Aceites Vegetales, S.A. Claimant has been a national 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 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.

The record contains stock certificate Nos. 169 and 185 issued to the claimant on June 14, 1948, for a total of 408 shares of stock; and No. 125 issued on April 18, 1960, after a recapitalization, for 30 shares of stock in Aceites Vegetales, S.A. On the basis of all the evidence of record, including the foregoing certificates, the Commission finds that the claimant owned, continuously from prior to October 13, 1960 to the presentation of this claim, 438 shares of the capital stock issued by Aceites Vegetales, S.A.

The record discloses that Aceites Vegetales, S.A. was nationalized by Cuban Law 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 503(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 his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The Commission concludes that as a result of the nationalization by the Government of Cuba of Aceites Vegetales, S.A., claimant suffered a loss within the meaning of Title V of the Act.

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.

Claimant submitted an acceptable 1959 balance sheet which reflects the following:

ASSETS

Current Assets:

Cash in Safe & Banks:

Cash	\$16,485.69	
The 1st. Nat. City Bank, Admin. Account	\$ 1,365.71	
The 1st. Nat. City Bank, Special Account	1,741.87	
The Royal Bank of Canada, Special Account	3,887.57	
The Royal Bank of Canada, Admin. Account	5,000.00	
Banco Continental Cubana, Special Account	4,380.90	
Banco Continental Cubana, Admin. Account	<u>5,000.00</u>	\$ 37,861.74

Inventories:

Warehouse Stock	\$ 26,214.69	
Products in Stock	17,666.51	
By-Products in Stock	728.80	
Packing Materials	11,159.42	
Raw Materials	17,096.14	
Unshelled Peanut Stock	\$205,087.10	
Sundry Materials	<u>18,774.72</u>	296,727.38
Accounts Receivable	\$266,953.41	
Warehouse Accounts Receivable	48,239.71	
Agents & Planters	<u>34,556.35</u>	
	\$349,749.47	
Less: Acct. Doubtful & uncollectible Accts.	<u>24,548.76</u>	325,200.71
Retirement & Discount for Employees		<u>532.46</u>
Total Current Assets:		\$660,322.29

Fixed Assets:

Real Estate & Buildings		\$286,460.40	
Machinery & Equipment	\$121,989.79		
Less: Reserve for Depreciation	<u>75,040.07</u>	46,949.72	
Investments in Rancho Boyeros		229,084.83	
Trade-Marks & Patents		41,141.45	
Non-Decreasing Assets		<u>49.34</u>	\$603,685.74

Investments:

Bonds		\$ 32,612.54	
Stocks		<u>632.00</u>	33,244.54

Deferred Charges:

Organization expenses		5,584.33	
Deferred expenses		384.10	
Unexpired Insurance		<u>4,871.54</u>	10,839.97

Total Assets \$1,308,092.54

LIABILITIES

Current Liabilities:

The Royal Bk. of Canada (Notes)	\$100,000.00	
Bk. Continental Cubano, (Notes)	50,000.00	
Accounts Payable	64,051.02	
Employee Vacations Payable	9,104.18	
Dividends Payable	10,685.30	
Taxes Payable	36,910.99	
Imports Pending Payment	32,904.34	
Taxes Payable - Agreement Law 40	8,053.98	
Retirement Payable	3,101.03	
Retirement Payable with Agreement	<u>1,819.62</u>	\$316,630.46

Surplus:

Stipends Board Directors & Officials	\$ 11,299.09	
Reserve for Contingencies	5,249.70	
Statute Reserve	109,062.04	
Profits from July to Dec. of 1959	<u>112,751.25</u>	238,362.08

Capital:

7,531 Shares of \$100 Each One 753,100.00

Total Liabilities, Surplus & Capital \$1,308,092.54

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 over contractual liabilities represents the owner's equity or net worth of the Company. The same result usually may be reached by adding the capital investments, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

It appears, however, that the item of "organizational expenses" is merely a bookkeeping expense item, and should not be considered as an asset for purposes of certification of loss.

Thus, the calculation of net worth of the Cuban entity is as follows:

Total assets (adjusted by subtracting organizational expenses valued at \$5,584.33)	\$1,302,508.21
Less current liabilities	<u>316,630.46</u>
Net Worth	\$ 985,877.75

The Commission finds, based upon the evidence of record, that Aceites Vegetales, S.A. had 7,531 shares of capital stock outstanding on the date of its nationalization and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Aceites Vegetales, S.A. was \$130.9092 per share of the capital stock.

Accordingly, in the instant claim, the Commission finds that claimant, WILLIAM W. WATERMAN, as holder of 408 shares of capital stock, suffered a loss in the amount of \$53,410.95 within the meaning of Title V of the Act, as a result of the nationalization of Aceites Vegetales, S.A. by the Government of Cuba on October 13, 1960.

The remaining 30 shares of stock held by claimant were issued to him in 1960, and were not included in the 7,531 reflected on the 1959 balance sheet. The record reflects, however, that dividends in the

amount of \$2,990.62 were due the claimant. These were included in a "Dividends Payable" figure of \$10,685.30 shown in the liabilities on the 1959 balance sheet. It appears that the 30 shares were issued in lieu of the dividends, plus an additional amount of \$9.38 to cover the total value of the 30 shares.

Accordingly, the Commission finds that the total loss suffered by claimant on October 13, 1960, as a result of the nationalization by the Government of Cuba of Aceites Vegetales, S.A. was as follows:

\$53,410.95	for 408 shares
<u>2,990.62</u>	for dividends due
\$56,401.57	

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any greater or lesser amounts which may be asserted by the claimant as the extent thereof.

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.)

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 WILLIAM W. WATERMAN 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 Fifty-Six Thousand Four Hundred One Dollars and Fifty-Seven Cents (\$56,401.57) 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

FEB 19 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 for 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).)