

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

IN THE MATTER OF THE CLAIM OF

CUBA GRAPEFRUIT COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0233

Decision No. CU 3724

Counsel for claimant:

Bleakley, Platt, Schmidt,  
Hart & Fritz  
By Alton E. Peters, Esq.

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 \$1,208,000.00, was presented by CUBA GRAPEFRUIT COMPANY, INC., based upon the asserted loss of certain real and personal property in Cuba.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of New York and that at all pertinent times more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States. An authorized officer of claimant has certified that on the date of loss and on the date of filing with the Commission 95.7% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record establishes and the Commission finds that claimant owned 927 acres of land in Ceballos, Cuba, improved by structures and containing certain personal property, all of which was used by claimant in its operation of citrus groves.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the CUBA GRAPEFRUIT COMPANY, INC. The Commission finds that claimant's properties in Cuba were nationalized on October 24, 1960, as a result of which claimant sustained 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.

The claimant's property consisted of 822 acres of arable land, of which 606 acres were planted with 55,027 orange trees, and 216 acres were unplanted. The land was said to be in the most fertile area of Cuba with irrigation supplied by wells, and the fruit produced thereon was of high quality. A main railroad line crossed in front of the claimant's property, with a spur running to the claimant's packing house. The claimant's property was also near the central highway leading to Havana. In 1960, the year in which the claimant's property was expropriated, the evidence shows that 11,269,432 oranges were marketed. The claimant's packing house, on the plantation, measured approximately 200 by 100 feet, and was of wood construction with corrugated zinc roof. In addition, there was an office building and several small buildings in which employees lived. Finally, there were tractors, trucks and other equipment for the cultivation of the groves and harvesting, washing, sizing and packing of the oranges.

Claimant first computed its claim by merely adding \$500,000.00 to the \$708,375.00 value found by the United States Board of Tax Appeals in an early case on November 16, 1914, and states that it "estimates that the value of its properties has increased in forty-seven years by not less than \$500,000.00." Accordingly, claimant asserted its claim as "not less than the aforesaid total amount of \$1,208,000.00."

By letter of August 3, 1966, claimant, through its attorney, stated that it estimated the value of 600 acres of orange groves at \$2,000 per acre, thus arriving at \$1,200,000; and it further stated that the figure did not take into consideration a tentative agreement reached with Kraft Foods Company

for the sale of produce. It is apparent from other evidence submitted by claimant, that its evaluation omitted consideration of the unplanted land.

The evidence includes copies of the deeds, pursuant to which claimant acquired title to 927 acres of land; a copy of a statement showing the income and expenses relating to the property in Cuba, covering the period October 1, 1934 to September 30, 1960; a copy of a decision by the United States Board of Tax Appeals, dated February 19, 1927, in which the value of the property herein was found to be \$708,375.00 as of November 16, 1914. It also includes a copy of a statement showing the expenditures during the period October 1, 1934 to September 30, 1960 for cultivating, irrigating, fertilizing and re-planting the orange groves; an affidavit, dated October 7, 1968, from an attorney who had specialized in real estate transactions in the area where the subject property was located and had served as counsellor to the Municipality in the annual valuation of plantations and farms for tax purposes, indicating on the basis of personal knowledge of claimant's property and a sale of similar property in 1957 the values of claimant's planted groves, unplanted land and the buildings and appurtenant personal property; and statements from officials of claimant concerning this claim.

Upon consideration of the entire record, the Commission finds that on the date of loss, October 24, 1960, the value of claimant's property was as follows:

606 acres of orange groves at \$2,500.00 per acre	\$1,515,000.00
321 acres of unplanted land at \$70.00 per acre	22,470.00
Buildings and equipment	<u>30,000.00</u>
Total	<u>\$1,567,470.00</u>

It will be noted that the total amount of the 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 lesser or greater amounts which may be asserted by 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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CUBA GRAPEFRUIT COMPANY, INC. 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 Million Five Hundred Sixty-seven Thousand Four Hundred Seventy Dollars (\$1,567,470.00) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 26 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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 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).)