

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

IN THE MATTER OF THE CLAIM OF

GENERAL CIGAR CO., INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0246

Decision No. CU 3158

Counsel for claimant:

Nixon, Mudge, Rose, Guthrie,  
Alexander and Mitchell

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 \$139,168.00 was presented by GENERAL CIGAR CO., INC. based upon the asserted ownership and loss of improved real property situated in Havana, 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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in New York as United Cigar Manufacturers Company, and that the corporate name was changed to GENERAL CIGAR CO., INC. in 1917. It has been further certified that at all times between 1927 and the presentation of this claim more than 50% of claimant's outstanding capital stock has been owned by United States nationals. Claimant has stated that on August 15, 1961 94.09 per cent of its stock was owned by United States nationals. The Commission finds that GENERAL CIGAR CO., INC. is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The property upon which the claim is based is land, improved by a warehouse used for storing tobacco leaf located at Ensanche de la Habana, Luaches No. 76, Havana, Cuba.

There have been submitted a certified translation of the document of sale of the land dated August 15, 1927 to claimant, a building construction contract entered into by claimant and Frederick Snare Corporation (as Builder), through their respective agents calling for the construction of a three-story, flat-roofed building on the land in question; and a certified translation of a document wherein claimant and the builder recite full performance of the construction contract by both parties.

On the basis of evidence thus presented, the Commission finds that claimant was the owner of the land and building located at Luaches 76 (later changed to Luaches 20), Havana, Cuba, and that claimant had owned the improved property continuously since June 15, 1929, the date on which the construction contract was fully performed.

The record contains the affidavit of an employee of claimant, who states, in substance, that prior to November 3, 1960, he disposed of all inventory and other removable personalty then located at Luaches 76; he further states that while present at Luaches 76 on November 3, 1960, he was visited by three representatives of the Cuban Government, two of whom were armed, and was informed orally that the land, building and personalty located at Luaches 76 had been intervened by order of the National Agrarian Reform Institute. He was directed to vacate the premises immediately.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties for distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The Regulations for carrying out the expropriation of such properties were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

In the absence of evidence to the contrary, the Commission concludes that claimant's property was intervened by the Government of Cuba on November 3, 1960, pursuant to the provisions of the Agrarian Reform Law.

Information available to the Commission shows that in Book 21, Folio 51 of the Havana Property Register, there is a description

of property #528, which is comprised of Lots 7, 8, 9, 10, 11, 12, 13 and 14 of Block 8 of the Section "Club Almendares". The description is that of a three-story flat-roofed building erected for industrial use on the said land. Both the land and the building are registered in claimant's name in the Havana Registry.

Claimant has submitted a copy of Treasury Department Form TFR-500, Census of Property in Foreign Countries. This form, executed by an officer of the claimant corporation on October 27, 1943, shows that the fixed assets at Luaches 76 were carried at an undepreciated value of \$277,171.00 as of that date. Claimant has also submitted photographic copies of its accounting statements and ledger sheets, which indicate that the depreciated value of the claimed property was \$141,956.00 as of December 31, 1959. The essential elements of the claim were set forth in a letter by the claimant to the United States Department of State dated July 11, 1960, more than three months before the intervention on November 3, 1960.

The claimant has filed its claim for \$139,168.00--subtracting from the December 31, 1959 book value \$2,787.94 depreciation for the year 1960. Inasmuch as the loss occurred on November 3, 1960, the Commission concludes that only 308 days depreciation, rather than 366 days, should be charged against the assets for the year 1960. The lesser depreciation figure is \$2,346.96 (308 x \$7.62 per day); therefore, the depreciated value of the property as of November 3, 1960 was \$139,609.04 (\$141,956.00 - \$2,346.96).

Based upon all of the evidence of record, and in the absence of contrary evidence, the Commission finds that claimant suffered a loss, as a result of the actions of the Government of Cuba, on November 3, 1960, in the total amount of \$139,609.04.

It will be noted that the amount of loss found herein is in excess of the amount asserted by claimant. However, in determining amounts of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants 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-0664), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that GENERAL CIGAR CO., INC. 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 Thirty-Nine Thousand Six Hundred Nine Dollars and Four Cents (\$139,609.04) with interest thereon at 6% per annum from November 3, 1960 to the date of settlement.

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

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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).)