

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20570

IN THE MATTER OF THE CLAIM OF

EMMET H. HYMAN  
MURIEL O. HYMAN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0256

Decision No. CU 5939

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by EMMET H. HYMAN and MURIEL O. HYMAN in the amended amount of \$1,200,809.00 based upon the asserted ownership and loss of certain personal property in Cuba. Claimants have been nationals 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 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.

Claimants assert the following losses:

|  |                |
|--|----------------|
| 439,920 shares of Minimax Super-Mercados, S.A., hereinafter called "Minimax" | \$1,099,800.00 |
| 1,200 Gum ball machines  | 42,000.00      |
| Household furnishings and automobile   | 57,029.00      |
| 1,500 shares of United Cuban Oil Company, Inc.                               | 1,230.00       |
| 150 shares of Trans-Cuba Oil Company   | <u>750.00</u>  |
| Total  | \$1,200,809.00 |

Minimax Super-Mercados, S.A.

The record establishes and the Commission finds that claimant, EMMET H. HYMAN, owned 384,744 shares of Minimax, and that his spouse and he jointly owned an additional 55,176 shares since prior to September 1, 1960.

In our decision entitled the Claim of Libby Holman Reynolds (Claim No. CU-1384 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on September 1, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$1.0023.

Accordingly, the Commission finds that the value of claimants' 439,920 shares of stock was \$440,931.82 and that claimants, pursuant to the Community Property Laws of Cuba, each suffered a loss of \$220,465.96 within the meaning of Title V of the Act.

Trans-Cuba Oil Company

In our decision entitled the Claim of D. R. Wimberly (Claim No. CU-3417 which we incorporate herein by reference), we held that the properties owned or controlled by the Company were nationalized or otherwise taken by the

Government of Cuba on November 23, 1959, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$0.1198.

On the basis of evidence in the record in the instant case, the Commission finds that these claimants come within the terms of the Wimberly decision; that pursuant to the Community Property Laws of Cuba they have been the owners of equal interests in 150 shares of stock in the Trans-Cuba Oil Company since prior to November 23, 1959; and that they suffered a loss in the aggregate amount of \$17.97 within the meaning of Title V of the Act.

United Cuban Oil Company, Inc.

With regard to the portion of this claim based upon a stock interest in United Cuban Oil Company, Inc. the Commission has previously determined that this corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of United Cuban Oil Inc., Claim No. CU-2807.)

Section 505(a) of the Act provides that

"A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. . ."

The Commission concludes that since this portion of the claim is based on a stock interest in a corporation which qualifies as a United States national, the Commission is precluded, under Section 505(a) from considering this portion of the claim. Accordingly, it is hereby denied. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

Gum Ball Machines

Based on the evidence of record including an affidavit of claimant EMMET H. HYMAN the Commission finds that claimant EMMET H. HYMAN purchased 1,200 gum ball machines in February 1957 at a cost of \$35.00 each, and in the absence of evidence to the contrary, the Commission finds that they were taken by the Government of Cuba on September 1, 1960 when Minimax was intervened.

On the basis of the evidence of record, the Commission finds that on September 1, 1960, the date of loss, the gum ball machines, after appropriate depreciation, had a total value of \$21,000.00.

#### Household Furnishings

Claimants have submitted a certified detailed list of their household furnishings and appliances as of April 1960. They also claim the loss of a 1952 Bel Air Convertible. Based upon the entire record the Commission finds that claimants owned this personal property.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject personal property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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 record includes, in support of the claimed values, the aforementioned detailed list. Claimant EMMET H. HYMAN states that most of the personalty was purchased after he and his wife arrived in Cuba in 1946, and that they occupied a 10-room apartment in Havana. He further states that the values given on the list have taken depreciation into account. However, an examination of the list submitted indicates that the list as a whole does not appear to have adopted appropriate depreciation factors, assuming that most of the personalty was purchased about 1946.

Based on the entire record, the Commission finds that at the time of loss the household furniture, furnishings, appliances, clothing and 1952 Bel Air had an aggregate value of \$31,861.95.

Claimants' losses may be summarized as follows:

| <u>Item</u>                    | <u>Date of Loss</u> | <u>Amount</u>    |
|--------------------------------|---------------------|------------------|
| Trans-Cuba Oil Company         | November 23, 1959   | \$ 17.97         |
| Minimax                        | September 1, 1960   | 440,931.82       |
| Gum ball machines              | September 1, 1960   | 21,000.00        |
| Household furnishings,<br>etc. | December 6, 1961    | <u>31,861.95</u> |
|                                |                     | \$493,811.74     |

Accordingly, the Commission concludes that claimants suffered losses in the aggregate amount of \$493,811.74 within the meaning of Title V of the Act.

The Commission has decided that in certifications 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

| <u>FROM</u>       | <u>ON</u>        |
|-------------------|------------------|
| November 23, 1959 | \$ 17.97         |
| September 1, 1960 | 461,931.82       |
| December 6, 1961  | <u>31,861.95</u> |
|                   | \$493,811.74     |


CERTIFICATIONS OF LOSS

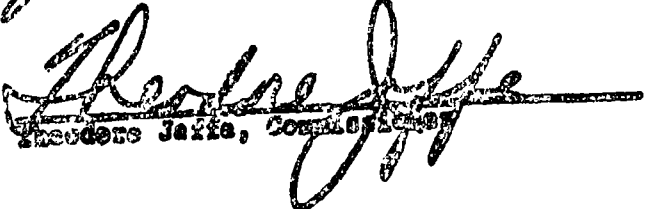
The Commission certifies that EMMET H. HYMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Forty-six Thousand Nine Hundred Five Dollars and Eighty-seven Cents (\$246,905.87) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MURIEL O. HYMAN 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 Two Hundred Forty-six Thousand Nine Hundred Five Dollars and Eighty-seven Cents (\$246,905.87) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

NOV 4 1970

  
Leo S. Garlock, Chairman

  
Theodore Jaffe, 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 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).)

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