

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

IN THE MATTER OF THE CLAIM OF

ROBERT A. MAINZER AND ETHEL M.  
IVES, EXECUTORS OF THE ESTATE  
OF ADOLF J. MAINZER, DECEASED

Claim No. CU -0639

Decision No. CU 3648

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Macfarlane, Ferguson, Allison & Kelly  
By John C. Bierley, 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 \$886,446.65, was presented originally by ADOLF J. MAINZER, a national of the United States from November 17, 1921 until his death on June 16, 1966, after the date of filing with the Commission. Accordingly, his executors have been substituted as claimants. The claim is based upon the asserted loss of stock interests in two Cuban corporations.

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.

The record establishes and the Commission finds that the deceased owned 569 shares of stock of Robertel Fruit Company, Inc., hereafter called Robertel, and 46 shares of stock of Alquizar Pineapple Company, Inc., hereafter called Alquizar. It further appears from the record that Robertel owned land and improvements in Pinar del Rio Province, Cuba, which contained teakwood trees, citron trees, mango trees, as well as pineapple and banana plants. Its property was improved by a pineapple and fruit processing plant which was under lease to Alquizar, and Alquizar was engaged in processing pineapple and other fruits supplied by Robertel and others.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized Alquizar Pineapple Company, Inc. The Commission finds that Alquizar was nationalized on October 24, 1960, and that Robertel which was closely related to Alquizar in its operations was also nationalized by Cuba on October 24, 1960, as stated in an affidavit of July 29, 1964, executed by ADOLF J. MAINZER now deceased.

The record shows that Robertel and Alquizar were organized under the laws of Cuba and therefore neither qualifies 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 previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Accordingly, the Commission concludes that as a result of the nationalization of Robertel and Alquizar, the deceased 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 record includes audited balance sheets and supporting schedules for Robertel and Alquizar as of December 31, 1959; a consolidated statement and supporting schedules as of October 25, 1960, showing in detail the appraised values of the fixed assets of both corporations and of the trees and crops of Robertel; and an affidavit executed by ADOLF J. MAINZER now deceased, in which he set forth the values of the various items for which claim was made.

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimants is that shown in the balance sheets of December 31, 1959 and the appraisals as of October 25, 1960. Accordingly, the balance sheets have been adjusted appropriately as follows (the Cuban peso being on a par with the United States dollar):

Alquizar Pineapple Company, Inc.

Assets

Current Assets (per balance sheet)	\$ 169,669.80
Account Receivable - Robertel (per balance sheet)	<u>126,873.36</u>
Total Current Assets	\$ 296,543.16
Prepaid Expenses and Other Assets (per balance sheet)	35,197.83
Fixed Assets:	
Machinery & Equipment, including Rolling stock (appraisals)	268,410.00
Other Fixed Assets (per balance sheet)	<u>73,377.69</u>
Total Assets	\$ 673,528.68
Less Liabilities: (per balance sheet)	<u>265,814.94</u>
Net Worth	<u>\$ 407,713.74</u>

The record shows that Alquizar had 291 shares of capital stock outstanding on the date of loss. Since the net worth of Alquizar was \$407,713.74, the Commission finds that the value of one share of its stock was \$1,401.08 on the date of loss; and that the deceased sustained a loss in the amount of \$64,449.68 on account of his 46 shares of stock.

Robertel Fruit Company, Inc.

Assets

Current Assets (per balance sheet)	\$ 2,651.85
Crops and trees (appraisals)	384,500.00
Deferred Crop Expenses and Purchased Fields (per balance sheet)	242,771.13
195 Shares of Alquizar Stock at \$1,401.08 per share	273,210.60
Other Assets (per balance sheet)	7,428.74
Fixed Assets:	
Buildings (appraisals)	\$147,861.00
Furniture & Fixtures (appraisals)	8,000.00
Brining Equipment (appraisals)	19,550.00
Other Fixed Assets (per balance sheet)	<u>21,505.23</u>
Total Fixed Assets	<u>196,916.23</u>
Total Assets	\$1,107,478.55

Less Liabilities and Deficit:	
Current Liabilities	\$146,889.06
Due Alquizar	126,873.36
Due Adolf J. Mainzer	20,619.02
Deficit	<u>21,605.63</u>
Total Liabilities and Deficit	\$ <u>315,987.07</u>
Net Worth	\$ <u>791,491.48</u>

The record shows that Robertel had 700 shares of capital stock outstanding on the date of loss. Since the net worth of Robertel was \$791,491.48, the Commission finds that the value of one share of its stock was \$1,130.70 on the date of loss; and that the deceased sustained a loss in the amount of \$628,005.30 on account of his 569 shares of stock.

The Commission finds on the basis of the evidence of record, indicated above, that Robertel was indebted to the deceased in the amount of \$20,619.02, and concludes that the deceased sustained a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of Robertel by the Government of Cuba on October 24, 1960. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Accordingly, the deceased sustained the following losses on October 24, 1960:

Alquizar (46 shares)	\$ 64,449.68
Robertel (569 shares)	628,005.30
Debt from Robertel	<u>20,619.02</u>
Total Losses	\$713,074.00

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 ROBERT A. MAINZER AND ETHEL M. IVES, EXECUTORS OF THE ESTATE OF ADOLF J. MAINZER, DECEASED, succeeded to and 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 Seven Hundred Thirteen Thousand Seventy-four Dollars (\$713,074.00) 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

**MAY 14 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].)