

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

IN THE MATTER OF THE CLAIM OF

LYMAN D. BOTHWELL
HELEN S. BOTHWELL

Claim No. CU-1399

Decision No. CU
6440

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,438.35, was presented by LYMAN D. BOTHWELL and HELEN S. BOTHWELL and is based upon the asserted loss of stock interests in certain sugar companies 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 describe their losses as follows:

	<u>Asserted Value</u>
1. 10 shares in Central Violeta Sugar Co.,	\$ 99.15
2. 200 shares in Guantanamo Sugar Co.,	844.00
3. 100 shares in Vertientes-Camaguay Sugar Co.,	309.00
4. 200 shares in Manati Sugar Company,	465.00
5. Interest for seven years	<u>721.20</u>
Total	\$ 2,438.35

In our decisions entitled the Claim of Huntley E. Cox (Claim No. CU-2944) and the Claim of Ruth Anna Haskew (Claim No. CU-0849), which we incorporate herein by reference, we held that the properties of the Companies, Central Violeta Sugar Company, S.A. and Cia. Azucarera Vertientes-Camaguay de Cuba, were nationalized or otherwise taken by the Government of Cuba on October 13, 1960 and August 6, 1960, respectively, 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 \$30.4318 and \$46.3946, respectively.

On the basis of evidence in the record in the instant case, the Commission finds that these claimants come within the terms of the Cox and Haskew decisions; that they were American nationals at the requisite times; that claimants have been the joint owners of 10 shares of stock in the Central Violeta Sugar Company, S.A. since prior to October 13, 1960, and claimant LYMAN D. BOTHWELL was the sole owner of 100 shares of stock in the Cia. Azucarera Vertientes-Camaguay de Cuba since prior to August 6, 1960. Claimants LYMAN D. BOTHWELL and HELEN S. BOTHWELL each suffered a loss in the amount of \$152.16 on the Violeta shares and claimant LYMAN D. BOTHWELL suffered a loss in the amount of \$4,639.46 on the Vertientes shares.

Guantanamo Sugar Company

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

On the basis of evidence of record, the Commission finds that claimants jointly acquired a total of 100 shares of stock in the Guantanamo Sugar Company on April 18, 1961 for \$512.00 and 100 on May 1, 1961 for \$334.50.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. (See Claim of Henrietta Mae Siegel, Claim No. CU-3478.) In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimants, as assignees by purchase, acquired the claim for the loss sustained by the assignor of the claimed Guantanamo securities, but under the limitations provided in Section 507 of the Act (supra), each claimant is limited to \$423.25, the actual consideration each paid for these shares.

Manati Sugar Company

Part of this claim is based upon the ownership of 200 shares of common stock issued by Manati Sugar Company.

In our decision entitled the Claim of Manati Sugar Company (Claim No. CU-2525 which we incorporate herein by reference), we held that the Manati Sugar Company qualified as a United States national.

The Commission concludes that since this part of the instant claim is based on a stock interest in a corporation which qualified as a United States national, the Commission is precluded, under Section 505(a) of the Act, from considering it. Accordingly, this part of the claim is hereby denied.

Loss of Seven Years' Interest on Shares of Stock

Claimants state that they lost interest for seven years on their shares of stock in the subject sugar corporations and now assert a loss for this item in the amount of \$721.20.

The Commission has held that income due after the date of nationalization or taking of a property is not certifiable within the scope of Title V of the Act (see Claim of The University of Chicago, Claim No. CU-2590). Inasmuch as the property after the date of taking no longer belonged to the claimants, but to the Government of Cuba, claimants are not entitled to certifications of loss in addition to those for the value of the property at the time of taking. However, claimants are entitled to accrued interest on the principal amount of losses (see below).

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>	
LYMAN D. BOTHWELL	August 6, 1960	\$ 4,639.46	
	October 13, 1960	152.16	
	April 18, 1961	256.00	
	May 1, 1961	<u>167.25</u>	\$5,214.87
HELEN S. BOTHWELL	October 13, 1960	\$ 152.16	
	April 18, 1961	256.00	
	May 1, 1961	<u>167.25</u>	\$ 575.41

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

CERTIFICATIONS OF LOSS

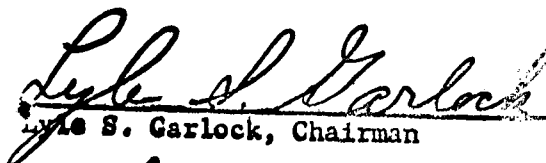
The Commission certifies that LYMAN D. BOTHWELL suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Two Hundred Fourteen Dollars and Eighty-seven Cents (\$5,214.87) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

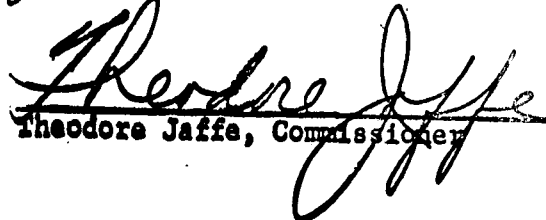
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The Commission certifies that HELEN S. BOTHWELL suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Seventy-five Dollars and Forty-one Cents (\$575.41) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

AUG 4 1971


Lyle 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 claimant establishes 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 (1970).)

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