

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

IN THE MATTER OF THE CLAIM OF

THE COCA-COLA COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1743

Decision No. CU - 6818

Counsel for claimant:

George W. Spangler, Esq.

FINAL DECISION

The Commission issued its Proposed Decision in this matter on September 22, 1971 certifying a loss to the claimant in the total amount of \$17,597,295.16, as follows:

On October 24, 1960	Land	\$ 2,265,881.00
	Buildings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	302,313.82
	Coolers & Dispensers	186,557.20
	Containers	2,005,000.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	981,912.84
	Added Value	3,500,000.00
		<u>\$18,033,653.60</u>
	Less Taxes	485,911.96
	Total	<u>\$17,547,741.64</u>
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguier Assignment	<u>18,738.47</u>
	Total Loss	\$17,597,295.16

Claimant objected to several of the findings of the Commission and submitted further supporting evidence with respect thereto. Upon consideration of the entire record, the Commission now makes the following findings.

Automotive Vehicles

In arriving at the value of this equipment, the Commission had considered the contention that the vehicles listed with values aggregating \$592,700.93

comprised approximately one-half the value of the equipment lost. However, the Commission relied on purchases for years 1956, 1957, 1958 and 1959, as shown by financial statements submitted, depreciated these at the customary rate of 15% a year and added the 1960 purchases. Claimant contends, however, that this method is not suitable for the type of vehicles under consideration, for evaluating the loss as of 1960.

As claimant points out, by 1960, the Cuban Government had imposed restrictions prohibiting the importation of vehicles, and as a result its then subsidiary Cia. Embotelladora Coca Cola, S.A., could not purchase, at any price, the needed vehicles, other than several route trucks acquired locally. Moreover, trucks such as those built for the purposes of transporting cases of Coca Cola are seen to have a useful life of many more years than ordinary vehicles.

The Commission now finds that in fact claimant possessed in Cuba more vehicles than those specifically listed in its available records, and further that the value of these on the date of loss was \$1,197,809, as contended by the the claimant's officers and as supported by the record.

Containers

Claimant had originally asserted claim for 2,000,000 containers (one wooden case and 24 bottles) at a value of \$4.01 each for a total of \$8,020,000. In its Proposed Decision the Commission found that claimant had in Cuba 500,000 containers and valued these at \$2,005,000.

Claimant refers to statements of Mr. David E. Berenguer, former general manager at Camaguey and Havana, who concludes that the figure found is erroneous and adheres to his original estimate of 2,000,000 containers; and to the statement of Mr. Miguel B. Macias, an expert on bottling requirements, now manager of the engineering department of The Coca-Cola Export Corporation, and former manager of the engineering department of Embotelladora in 1960, who after careful analysis has concluded that the minimum requirements for

Cuba in 1960 were 1,806,000 containers. Claimant points out that the cost of \$4.01 for containers represents \$3.41 as a current operating expense, and \$0.60 as a capital expense. Using the balance sheet (for September 30, 1960) figure of \$478,015.11 for containers, the claimant finds this may represent 796,691 containers.

Claimant points out, however, that considering the containers owned by Embotelladora on the date of loss were scattered in the hands of wholesalers, retailers, customers and in trucks, bottling plants, warehouses, and so forth, over an area of 44,218 square miles, Embotelladora could not ascertain exactly how many containers it owned. Accordingly, claimant now contends that it would be appropriate to use the average of the above three figures, finding 1,534,230 containers, of a value of \$4.01 each.

The Commission finds this method fair and reasonable and finds that claimant suffered a loss of \$6,152,262 with respect to the containers.

Bank Accounts and Cash

In this connection the Commission found that a total of \$981,912.84 had been lost to the claimant in bank accounts and cash. This did not include a Royal Bank account entitled "West Indies Region" in the amount of \$6,529.82, as the record did not establish that this was taken by the Government of Cuba. However, claimant has now established that the latter sum was in fact on deposit in Cuba in the Royal Bank of Canada, and was taken by the Government of Cuba. Accordingly, the Commission now finds that claimant's total loss in this connection was \$988,442.66.

Going Business Value

The claimant originally asserted a loss in the amount of \$17,807,042 for the value of its business over and above the value of its tangible assets. This has been discussed in the Proposed Decision. The Commission found the going concern value, on the basis of demonstrated earnings to investment to be minimal, and concluded that claimant suffered a loss in the amount of \$3,500,000 over and above the value of its physical assets.

Claimant contends that the figure is wholly inequitable, pointing to the uniqueness of the drink "Coca-Cola" which is based on a secret formula, with a trademark registered worldwide. Claimant also points out that advertising expenses for the years 1956 through 1960 (projected) averaged \$3,906,319 -- exceeding the value added by the Commission for its going business.

Further, it appears that sales of Coca-Cola in Cuba, from the outset of operations, were highly profitable. The sales for 1956 through 1960 (projected) amounted to an annual average of \$7,336,889 and represented an annual increase of almost 20 per cent.

Claimant has also submitted figures for June 15, 1972, reflecting that stock market prices versus 1971 earnings showed price earnings for other soft-drink industries (Dr. Pepper, Coca-Cola, 7-Up, Royal Crown Cola, and Pepsi Cola) as averaging 42.6; and asserts that if this average were multiplied by Embotelladora profits for 1959, the last full year of normal operation, of \$1,026,394, the market value would amount to \$43,724,384.

The Commission is not persuaded that the above methods appropriately evaluate the going business above the physical assets. However, upon re-examination of the entire record in this respect and considering the net profits for 1958 (the last year before the Castro take-over) of \$607,405; for 1959 (the last year of full operation) of \$1,026,394; and for 1960 (annualized) of \$840,994.66, which average \$824,931.22, holds that multiplying this figure by 10 to \$8,249,312.20 is an appropriate reflection of the value of the business over and above the physical assets. This is slightly more than one-third the value of the tangible asset figure (as revised) and the Commission holds that this is fair and reasonable.

Unpaid taxes

In its Proposed Decision, the Commission held that taxes due the Cuban Government must be deducted from the certifiable amount, under the principle of set-off, and found this amount to be \$485,911.96. However, the

claimant has since submitted evidence establishing that of this amount \$130,344.68 was set up on the books of the Cuban branch as "Income Tax Accruals Due the United States" and the balance of \$355,567.29 represented taxes due the Cuban Government. Accordingly, the Commission now holds that only the amount of \$355,567.29 should be deducted from the amount certifiable to the claimant.

Summary

The claimant's losses are restated as follows:

On October 24, 1960	Land	\$ 2,265,881.00
	Buildings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	1,197,809.00
	Coolers & Dispensers	186,557.20
	Containers	6,152,262.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	988,442.66
	Going Business Value	<u>8,249,312.20</u>
		\$27,832,252.80
	Less Cuban Taxes	<u>355,567.29</u>
	Total	\$27,476,685.51
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguer Assignment	<u>18,738.47</u>
	Total Loss	\$27,526,239.03

The Commission affirms its holding that interest shall be included in the Certification of Loss from the dates of loss to the date of settlement, as follows:

<u>FROM</u>	<u>ON</u>
October 24, 1960	\$27,476,685.51
January 30, 1961	30,815.05
February 13, 1961	<u>18,738.47</u>
	\$27,526,239.03

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

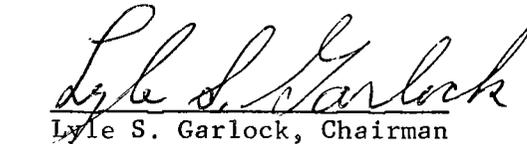
CERTIFICATION OF LOSS

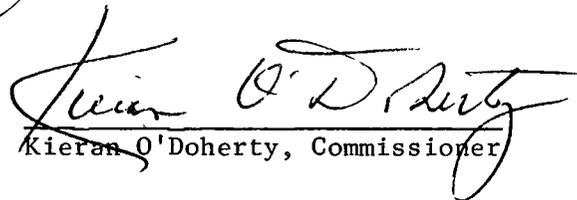
The Commission certifies that THE COCA-COLA COMPANY suffered a loss, and succeeded to losses as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Seven Million Five Hundred Twenty-Six Thousand Two Hundred Thirty-Nine Dollars and Three Cents (\$27,526,239.03) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 30 1972

TTT : JAWK


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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

IN THE MATTER OF THE CLAIM OF

THE COCA-COLA COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU-1743

Decision No. CU- 6818

Counsel for claimant:

George W. Spangler, 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 amended amount of \$41,037,460.00, was presented by THE COCA-COLA COMPANY based upon asserted losses of its assets in Cuba, going concern value, and assignments of claims of certain employees.

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 Delaware and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has stated that as of September 14, 1960 .2647% of claimant's outstanding capital stock was held by non-residents of the United States; and on April 18, 1967 .327% of its stock was held by non-residents 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 Commission finds on the basis of the evidence of record that claimant had owned a 100% stock interest in Cia. Embotelladora Coca Cola, S.A., a Delaware corporation, doing business in Cuba, hereafter referred to as Embotelladora. On August 19, 1960 a plan of liquidation of Embotelladora was adopted which transferred all properties of Embotelladora to the parent, which assumed all liabilities of the subsidiary. Embotelladora was dissolved August 22, 1960.

The record includes a report of Embotelladora to the United States Embassy as of June 29, 1960; schedules describing real property; a document transferring realty from Embotelladora to claimant; reports from sources abroad, photographs and drawings; schedules of personalty; affidavits of officers and professional employees of claimant and the former subsidiary.

On the basis of the entire record the Commission finds that on October 24, 1960, claimant owned in Cuba certain real and personal property further described below.

On October 24, 1960 the Cuban Government published its Resolution 3 (pursuant to Law 851) listing Embotelladora as nationalized. Accordingly, the Commission finds that the properties of the claimant in Cuba were effectively nationalized or otherwise taken by the Government of Cuba on that date.

The record reflects that on June 29, 1960, Embotelladora reported the value of its assets to the American Embassy as follows:

Land	\$ 515,915.29
Buildings	2,030,240.44
Machinery & Equipment	1,763,642.79
Motor Vehicles	598,906.61
Coolers	186,054.48
Building under Construction	
in Holguin	37,460.00
Containers	459,305.92
Furniture & Fixtures	<u>214,937.04</u>
	\$5,806,462.57
Inventories(including cooling equipment)	1,000,000.00
Bank accounts	<u>350,000.00</u>
	\$7,156,462.57

The above values were stated to be as of May 31, 1960. Subsequent to the expropriation of October 24, 1960, Mr. Robert J. Thompson, former Vice President of Embotelladora, addressed a letter of protest to the President of the Republic, which letter set forth the values in Cuban pesos (which are on a par with the United States dollar) of certain items which, as Mr. Thompson states in his affidavit of October 10, 1968, are as remembered by him. The letter, a copy of which is of record, states, in pertinent part, that as of that day the assets which the Company had throughout the Republic were as follows:

	<u>Pesos</u>
Bank deposits	\$ 992,847.93
Accounts receivable	731,083.58
Sugar	34,640.69
Ingredients	79,112.63
Syrup, concentrate and bottled product	26,302.64
Coolers	91,335.33
Miscellaneous(including all kinds of spare parts)	288,697.59
Prepaid expenses	19,757.64
Miscellaneous accounts receivable	87,897.78

Land	\$ 515,915.29
Buildings	2,088,082.42
Machinery and equipment	2,635,752.42
Coolers on loan	186,557.20
Containers	<u>478,015.11</u>
	\$8,255,998.25

The claim as filed by claimant's letter of April 18, 1967 was for \$38,860,972.86. By letter of November 20, 1968, claimant reduced its claim for realty by \$100,000 for 10,000 square meters of land in Holguin as to which title had not been perfected, and increased the claim by \$2,239,027.14 stating it had been ascertained by study and analysis of books and records that the property was worth more in October, 1960, than originally claimed.

By letter of December 24, 1968 claimant increased its claim by \$37,460.00 for expenses in connection with a proposed purchase of land in Holguin.

Claimant now describes its losses in a statement of November 11, 1968 as follows:

1. Real Property	\$ 2,265,881.00
2. Buildings and other improvements	5,351,681.00
3. Machinery & Equipment	2,230,000.00
4. Automotive Vehicles	1,197,809.00
5. Coolers and Dispensing Equipment	1,197,000.00
6. Containers	8,020,000.00
7. Furniture & Fixtures	326,604.00
8. Inventories	720,098.00
9. Accounts Receivable	827,280.00
10. Bank accounts and cash on hand	988,442.00
11. Assignment of Claims of three employees	68,163.00
12. Extraordinary Expense (Holguin)	37,460.00
13. Value of Business as a Going Concern, Good Will, Trademarks, Formulas, etc.	<u>17,807,042.00</u>
	\$41,037,460.00

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." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The items of claim, evidence submitted in support, and the Commission's findings in respect thereto, are set out below.

1. Real Estate

1. Land at Alejandro Ramirez 66, City of Havana, 3,755 square meters	\$ 342,870.00
2. Land at Santa Catalina 930, City of Havana, 19,615 square meters	1,078,825.00
3. Land at 6-8 Paseo de Marti, City of Santiago de Cuba, Oriente, 1,275 square meters	146,940.00
4. Land at Carretera al Acueducto, Avenida Marta, City of Santa Clara, 6,705 square meters	146,300.00
5. Land at Carretera Central, City of Artemisa, Pinar del Rio, 12,000 square meters	330,000.00
6. Land at Carretera Central Este y Ave. B, City of Camaguey, 10,043 square meters	<u>220,946.00</u>
	\$2,265,881.00

The land in 1 above is in three parts. Two parts were acquired by claimant in 1920 for \$82,000.00 including improvements and were transferred to Embotelladora in 1943; the third part was acquired by Embotelladora in 1950 at a price of \$24,500.00 including improvements.

Item 2 above was acquired on June 12, 1956 at a purchase price of \$374,262.00, Cuban currency, from the estate known as Calzada de Palatino.

Item 3 above was acquired by claimant in 1921 for \$48,000.00 and transferred to Embotelladora in 1943.

Item 4 above was acquired by Embotelladora in 1947 for \$20,955.37, and was part of a larger property named "Progreso", formerly known as "Esperanza."

Item 5 above was acquired by Embotelladora in 1948 for \$9,505.16 and was originally part of a former coffee plantation "Esperanza."

Item 6 above was acquired by Embotelladora in 1955, having been originally part of a property known as "Santa Mariana de Jayama" and later "La Perla de Jayama." It appears to have been acquired for the sum of \$29,017.43.

Claimant has submitted a 1960 affidavit by officers of the now dissolved Cia. Embotelladora Coca Cola, S.A., concerning the transfer of the land to claimant and describing it in detail. Additionally claimant has submitted an affidavit executed on September 3, 1968 by Amadeo Lopez Castro, an engineer and surveyor who taught for over 30 years at the University of Havana the art and science of real estate appraisal and evaluation. He was also a former Cabinet Minister having held, inter alia, the positions of President of the National Industrial Commission, and Minister of Agriculture. The affidavit discusses each item of real property and the affiant ascribes the aforesaid fair market values to them, on the basis of his experience.

The Commission is aware of the appreciation in value of land, such as described, subsequent to these purchase dates and on the basis of the record and other information available as to values of property in Cuba, finds that the aforesaid real properties had the asserted values, aggregating \$2,265,881.00, at the time of loss.

2. Buildings and Other Improvements

1. Office and warehouse building at Alejandro Ramirez 66, Havana, and resident building adjacent, known as San Francisco 39	\$ 314,312.00
2. Bottling plant and general office building at Santa Catalina 930, Havana	2,327,030.00
3. Bottling plant and office building at 6-8 Paseo de Marti, Santiago de Cuba	157,211.00
4. Bottling plant building at Carretera at Acueducto, Avenida Marta, Santa Clara	1,241,234.00
5. Bottling plant building at Carretera Central, Artemisa	638,129.00
6. Bottling plant building at Carretera Central Este y Ave. B, Camaguey	<u>673,765.00</u>
	\$5,351,681.00

In support of the asserted evaluations of the improvements claimant has submitted affidavits of Miguel B. Macias, a mechanical engineer and former Manager of the Engineering Department of Embotelladora, and of claimant in Havana, whose duties included construction, erection, maintenance and supervision of buildings, plants, warehouses, bottling machinery, and auxiliary and automotive equipment of all kinds. These affidavits, in detail, were based on his knowledge, old drawings and photographs, and are supported by copies of construction plans and photographs. These affidavits are supported by those of Mr. Lopez Castro, David E. Berenguer, former Manager of claimant's Camaguey and Havana plants, and Robert J. Thompson, chief financial officer of Embotelladora, who concur in the opinions of Mr. Macias.

The buildings are generally described as follows:

Item 1(a) - Alejandro Ramirez 66, Havana

A 2-story building on two lots, the ground floor used as a bottling room with auxiliary facilities such as washrooms, carpentry shops, machine shop and superintendent's office; the second floor having been devoted originally in one-half part to general office space and one-half was used for a soft drink syrup manufacturing plant and sugar warehouse.

Item 1(b) a one-story steel warehouse fronting on Calle San Francisco, built in 1953 and used as a soft drink bottling plant.

Mr. Macias points out that an old drawing of 1922 shows a plant building and auxiliary buildings, but that at the time of seizure two buildings covered the entire property. He further states that after construction in 1958 of the plant at Santa Catalina 930 (Item 2), machinery and equipment were removed from the Alejandro Ramirez building and it was thereafter used for warehousing. Mr. Macias further states as of January 14, 1970 that their improvements were appraised at a fair market value in October 1960 of \$314,312.

Item 2 - Santa Catalina 930, Havana

An office building, a syrup manufacturing and bottling facility and garages, constructed in 1957 consisting of (1) a 2-story concrete office building, with a basement for industrial purposes and an underground storage tank of 1,050 cubic meters; (2) a concrete structure with ventilated roof having ground floor used as a bottling facility and related activities, a mezzanine used for a syrup manufacturing plant and similar activities, and a basement used as a garage machine shop; (3) a one-story concrete structure used as a paint shop; (4) two buildings of shed-type construction used for parking trucks under cover; (5) fencing around entire tract of cyclone-type heavy wire mesh.

Item 3 - 6-8 Paseo de Marti, Santiago de Cuba

A two-story reinforced concrete building, of irregular shape apparently built about 1947: Ground floor utilized for bottling room, superintendent's office, refrigeration compressor area, spare parts department, CO₂ gas area, stockroom; first floor utilized for concentrate manufacture, sugar storage, advertising material storage, general storage and conference room; mezzanine floor where offices were situated.

Two shed-type annex buildings of reinforced concrete used for truck loading, boiler room, machine shop and carpentry shop.

Item 4 - Santa Clara plant

Two joined buildings constructed in 1948 as a facility for

manufacturing soft drink syrups and beverages: One concrete building of three floors housing bottling facilities, offices, storage areas, manufacturing area, transformer room; one-story steel structure housing warehousing facilities, compressor room, boiler room, checker's office, loading area.

Item 5 - Artemisa Plant

Two separate steel Quonset type buildings erected in 1953 for manufacturing soft drink syrups and beverages and housing offices, manufacturing process, storage, and loading facilities.

Item 6 - Camaguey Plant

Two buildings erected in 1955 for use as a soft drink bottling plant: Each a one-story, tile covered, steel structure, housing offices, manufacturing process, storage, and loading areas.

Further in support of the asserted values for buildings and related improvements claimant has submitted Affidavit No. 2 of Sr. Amadeo Lopez Castro, whose qualifications are set out above. In this affidavit, affiant states that he has examined the Macias affidavits and exhibits (being sketches or drawings) and gives his opinion that the buildings and related improvements (air conditioning, electrical installations and the like) had the fair market values on the date of loss, as asserted by claimant; and further, that except for the improvements at Alejandro Ramirez 66, which was an older type of construction, the building and bottling plants, located on highly desirable first class industrial property, were of new and modern type construction of excellent quality. Moreover, the photographs submitted reflect the type of modern construction used.

The computations by which claimant reached the exact and uneven figures asserted for each plant are not of record. Although requested by the Commission, they have not been adduced. Mr. Macias, in his affidavit of January 14, 1970 reaffirms the appraisals of Mr. Amadeo Lopez Castro, as to the other improvements. Moreover, Mr. Lopez Castro, in his affidavit of January 15, 1970, has reaffirmed his conclusions on the values of the improvements. The Commission finds that the entire record

substantiates the asserted values and finds that the improvements had the values asserted, in an aggregate amount of \$5,351,681, on the date of loss.

3. Machinery and Equipment

Claimant has asserted a value of \$2,230,000.00 for machinery and equipment at all the locations of its operations in Cuba.

The item in support of this valuation is an affidavit by Rafael C. Laredo, a chemical engineer, engaged in engineering, selling and servicing heavy equipment of all kinds used in connection with the preparing and packaging of carbonated soft drinks; and employed as a Sales Engineer. However, from 1953 to 1960 he was Vice President and General Manager of Liquid Carbonic Corporation of Cuba. During this time his employer supplied much of the equipment used by Embotelladora. His responsibilities included thorough familiarity with equipment used by claimant, regardless of origin.

In his appraisal of the equipment, Mr. Laredo explains that the equipment necessary to properly prepare and bottle a carbonated beverage is known as a "bottling line." He gives his opinion as to the fair market value in October, 1960 of the equipment or bottling lines as follows:

1. Havana	\$1,200,000.00
2. Santiago	240,000.00
3. Santa Clara	325,000.00
4. Artemisa	225,000.00
5. Camaguey	<u>240,000.00</u>
	\$2,230,000.00

Also submitted with respect to the value of claimant's machinery and equipment in Cuba is an affidavit of Miguel B. Macias, former Manager of claimant's Engineering Department in Havana, previously mentioned.

Mr. Macias has appended to his affidavit approximately 69 pages listing about 1,107 categories of items, with their accessories, each reciting the value he ascribes as the fair market value in October, 1960. These lists were compiled from records of Embotelladora, transferred to claimant and necessarily incomplete. These values are summarized as follows:

1(a) in General Offices, Havana	\$ 22,281.92	
Cost of Installation	4,456.38	
(b) Three bottling lines, Havana	910,890.13	
Cost of Installation	<u>182,198.02</u>	\$1,119,826.45
2 - Two bottling lines, Santiago de Cuba	201,663.24	
Cost of Installation	<u>40,332.64</u>	241,995.88
3 - Two bottling lines, Santa Clara	263,498.45	
Cost of Installation	<u>52,699.69</u>	316,198.14
4 - Two bottling lines, Artemisa	188,871.19	
Cost of Installation	<u>37,774.22</u>	226,645.41
5 - Two bottling lines, Camaguey	203,423.64	
Cost of Installation	<u>40,684.72</u>	<u>244,108.36</u>
		\$2,148,774.24

The Commission has considered all of the evidence of record and finds that the machinery and equipment had a value of \$2,148,774.24 on the date of loss.

4. Automotive Equipment

In support of the asserted value of \$1,197,809.00 for this item, claimant has submitted several affidavits. The affidavit of Mr. Macias, specifically, includes lists of vehicles at each plant, aggregating \$592,700.93, which he declares as approximately one-half the value of the seized equipment. He gives it as his opinion that claimant lost in excess of 250 vehicles. The lists were compiled from original records of the claimant and may be summarized as follows:

	<u>Vehicles</u>	
1(a) Havana General Office	15	\$ 43,325.83
(b) Havana plant	151	350,454.47
2 - Santiago plant	27	72,360.97
3 - Santa Clara plant	12	29,203.67
4 - Artemisa plant	21	66,707.78
5 - Camaguey plant	<u>10</u>	<u>31,549.21</u>
	236	\$592,601.93

The lists include vehicle models of the years 1941, 1946, 1948 and later with the values stated apparently being the original purchase prices. The balance sheet dated September 30, 1960 for Embotelladora lists the original cost of the autos and trucks, without depreciation, as \$599,206.61. The rate of depreciation employed by claimant was 25% per annum, with the depreciated book value on December 31, 1959 appearing as \$156,113.46 in the audited financial statement for 1959 listing of asset accounts (Annex 11E, Exhibit D). The unaudited September 30, 1960 statement does not list the assets with depreciation separately, only the total cost of the assets not previously written off. The undepreciated value shown in September, 1960 of \$599,206.61 included \$94,295.61 added in the period between December 31, 1959 and September 30, 1960. In his affidavit of January 16, 1970, Mr. Thompson, the chief financial officer, stated that the amount of \$599,206.61 was after deduction of depreciation of 25% per annum. However a close examination of all the financial records reveals that the high figure is before depreciation. He also stated that new trucks costing more than \$230,000.00 were acquired during the year 1960 but were not included in the unaudited statement. Such an expenditure is not evident from the Profit and Loss Statement for the period ending on September 30, 1960 nor is this amount included in the sum which Mr. Thompson demanded from the Cuban Government on October 26, 1960 as compensation for the property seized (Exhibit 9, Annex 11A).

The Commission finds that a fair value for the automotive equipment may be determined by depreciating the purchases for the years 1956, 1957, 1958 and 1959 at the rate of 15% per annum and adding such values to the amount paid out in 1960 and to the depreciated value of the equipment owned on December 31, 1955, as reflected in the financial statements for the years 1956-1960. The Commission concludes that the fair value of the auto and truck equipment as of October 24, 1960 was \$302,313.82.

5. Coolers and Dispensing Equipment

Claimant asserts a loss of \$1,197,000.00 for coolers and dispensing equipment at all of its plant locations in Cuba. In support thereof it has submitted the affidavits of Andres Gomez, former manager of its Cooler

Department in Cuba; Louis R. Rossell-Castelnuau, the purchasing agent of Embotelladora; David E. Berenguer and Juan M. Diaz, formerly chief internal auditor of Embotelladora.

This type of equipment was not manufactured in Cuba, being imported from the United States, and included the following:

- Coin controlled coolers
- Cup vending pre-mix machines
- Beverage tanks
- Fountain dispensers
- Open top refrigerator coolers, and spare parts.

Mr. Gomez listed some of the equipment with their locations, for which he specified a value of \$255,574.47, including 40% added for freight, insurance, duty, storage and handling charges. He set forth the specific equipment used in the Havana area having a value of \$617,500.00 and asserted that additional equipment valued at 40% of this amount was necessary to serve the remainder of Cuba. Lastly, he stated a value of \$332,500.00 for such equipment in storage. The other affidavits supported the statements of Mr. Gomez.

The equipment does not include similar equipment which claimant or its Cuban predecessor sold on conditional sales agreements. Any balances due on such contracts are included in the Accounts Receivable discussed below.

The financial statements for the period from December 31, 1955 to September 30, 1960 do not reflect the purchases asserted. On December 31, 1955, the records indicate coolers having a book value of \$8,112.64 on hand. In subsequent years the following additions were made: in 1956 - \$31,660.76, in 1957 - \$14,446.72, in 1958 - \$16,619.53, in 1959 - \$86,180.38, and in 1960 - \$12,062.91, for a total on hand of \$169,082.94 without deduction for depreciation for those items added after 1955. Because of the broad discrepancy between the affidavits and the financial statements, the Commission holds that the balance sheet of September 30, 1960 is the most appropriate measure of the value of the Coolers and Dispensing Equipment.

The Commission therefore finds that the value of this equipment on October 24, 1960 amounted to \$186,557.20.

6. Containers

Claim is made in the amount of \$8,020,000 for containers at all locations. Affidavits concerning this item of claim have been submitted from David E. Berenguer, Louis R. Rossell-Castelnuau, Juan M. Diaz, all previously mentioned, as well as Jose Joaquin Mestre, a former self-employed Distributor Agent of Embotelladora.

Mr. Berenguer points out that claimant operated its soft drink business in Cuba on the "returnable bottle system" under which it did not sell and convey title to containers such as bottles and cases, but maintained ownership throughout transactions involving sale of contents. Purchasers were required to make a cash deposit against return of bottles and cases. As General Manager he observed that the Havana facility did approximately 50% and Camaguey approximately 13% of the business and he was intimately familiar with the details of that 63% of claimant's business; and knew that similar conditions prevailed in Artemisa, Santa Clara and Santiago, which plants contributed 37% of the claimant's business. The system of distribution in Havana, Artemisa and Santiago was by means of Company-owned route trucks operated by Company employees; and the system of distribution used at Santa Clara and Camaguey and rural communities served by all plants was by means of independent distributors. Each such distributor maintained his own warehouse, route trucks and like equipment, and purchased beverages and made deposits on bottles and cases, delivering them from his warehouse to the retail dealers. Claimant sold goods to 137 such distributors who maintained 137 different warehouses with a stock of full and empty goods. It was not unusual for a distributor to have on hand several thousand cases each containing 24 bottles, either full, or empties to be returned against the deposit. The rural population purchased approximately 40% of claimant's goods and it was accordingly necessary for the distributors to maintain an inventory of bottles and cases in excess of the requirements of the urban community served by the other system.

According to Mr. Berenguer, in the year 1959, the Camaguey plant purchased 200,000 new cases to maintain an annual sale of 1,200,000 cases

whereas Havana required only 200,000 to maintain annual sales of approximately 6,000,000 cases. Mr. Berenguer is of the opinion that the claimant owned 2,000,000 cases of 24 bottles each on the date of expropriation, valued at \$4.01 per case.

Mr. Rossell-Castelnau, former purchasing agent, familiar with the methods of distribution, points out that sales and delivery in Havana and other urban cities were generally made three times a week, and in rural interior cities once a week, and in most sparsely populated territories once in about every two or three weeks. This system required a considerable number of bottles and cases. It was his experience that the average case and 24 bottles disappeared after approximately twelve trips. In 1959, he states, claimant sold approximately 12.5 million cases in the Island and that an average 8.5% container loss was not excessive and was customarily expected.

Mr. Rossell-Castelnau has clarified the make-up of the unit price of \$4.01 used by claimant as follows: Bottles were purchased from Owens-Illinois Glass Co., f.o.b. its plant at Havana, at a contract price of \$2.33 per unit of 24 bottles, stating that this price was an artificial one fixed at about equal to the United States f.o.b. price of similar unit bottles, plus a sum representing freight and related charges, from the United States to Havana; and was calculated to protect the Cuban glass industry. Wooden cases with 24 compartments were purchased under similar conditions from Parada, Hnos, f.o.b. Havana, at \$1.17 each. Further, packaging, freight, handling and storage costs were approximately \$.51 per case. He recites his opinion that the bottles and cases owned by claimant at date of seizure had a fair market value of \$4.01 each.

Further, Mr. Rossell-Castelnau opines that claimant had title to more than 2,000,000 cases on October 25-26, 1960, some in its possession in new inventory, more in the "float" between dealers and bottling plants, and even more in the hands (under the deposit system) of its dealers and ultimate consumers.

Under the claimant's accounting system, the initial cost of a case of bottles was written down when it was put into use, from \$4.01 to 60 cents, representing a deposit of two cents for each bottle and twelve cents for the case. The difference of \$3.41 was charged to expense of sale. The sixty-cent deposit was shown on the asset side of the balance sheet (under Property, Plant and Equipment - Containers) and the 60 cents owed the customer was shown on the liability side of the balance sheet (under the item Deposits on Containers).

Juan M. Diaz, former Chief Internal Auditor for Cuban operations, in his affidavit also discusses the accounting practices of the claimants and concludes with his opinion that claimant owned 2,000,000 cases of bottles, worth not less than \$4.01 per unit, which were expropriated.

The affidavit of Jose Joaquin Mestre concerns his experiences as a distributor of claimant's products. He engaged in his business at Moron, Camaguey, where he had an office and warehouse; and maintained sub-warehouses at Florencia and Chambas where he employed sub-agents, and warehouses in the commercial departments of Central Patria and Central Moron, which latter was the largest raw sugar mill in the world. He states that he sold an average of 110,000 cases of 24 bottles per year, estimating that at all times he had on hand in his and the sub-agent's warehouses, and on trucks 25,550 cases full or empty. In addition he estimates that his dealers had an equal number of cases on hand or in the hands of customers. In his opinion the cases and bottles did not deteriorate or become less valuable with use. Bottles and cases were stated to disappear and must be replaced periodically because of breakage and failure of the customer to return them.

The financial statements, however, indicate that claimant had on hand in December 1955 containers valued at \$547,192.81. Additional purchases of containers for the succeeding years were: for 1956 - \$381,455.53, 1957 - \$453,126.13, for 1958 - \$430,324.99, for 1959 \$939,313.62, and for 1960 + \$102,778.94 for a total of \$2,791,192.02. During the same period a total of \$2,313,176.91 was written off, presumably when the containers were taken from storage and put in circulation and deposits of \$.60 per case were received from customers.

On the basis of the evidence of record, considering claimant's estimate of the useful life of containers and the replacement purchases, the Commission finds that claimant had approximately 500,000 containers on hand for which a loss of \$2,005,000.00 was suffered.

7. Furniture and Fixtures

Claimant has asserted a loss of \$326,604.06 for the furniture, office fixtures and equipment at the following locations:

Havana Home Office	\$118,157.20
Havana Bottling Plant	123,927.01
Warehouse & Office	20,000.00
Santiago de Cuba	23,629.73
Santa Clara	18,609.70
Artemisa	11,813.95
Camaguey	<u>10,466.47</u>
	\$326,604.06

The evidence in support of the claimed values consists of an affidavit of Juan M. Diaz and record cards listing each item, its cost and freight and tariffs paid if applicable. The affidavit of Mr. Diaz was accompanied by separate lists evaluating items of the equipment for the general offices and each bottling plant for which a separate record card had been filed. Mr. Diaz totalled the values for the items and added an additional 40% to cover the costs of freight, insurance, handling charges, duty and storage. The values listed for each item, however, are the same amounts as entered on the inventory cards for the total cost. The inventory cards indicate the source of the item, freight and duty paid, when applicable, and date of purchase or manufacture. A thorough review of the inventory cards reveals that most of the items were supplied by local dealers, and that freight and duty costs paid were included in the total costs. Mr. Diaz therefore has duplicated freight and duty costs in his extra allowance of 40% and the 40% includes freight and duty costs for those items purchased in Cuba for which such charges were not necessary. His appraisal is based also upon the original cost of the items and not on depreciated values although some items were ten,

twenty and thirty years old. Accordingly, the Commission finds that the values as set forth in the asset listing for the financial statement of December 31, 1959 (\$114,259.18) plus the added purchase for 1960 (\$17,437.19) are the most equitable for the Furniture and Fixtures.

On the basis of the entire record, the Commission finds that the value of the Furniture and Fixtures lost by claimant in Cuba on October 24, 1960 was \$131,696.37.

8. Inventories

Claimant asserts a loss of \$720,098.00 for its inventories of spare parts for machinery and other equipment, crowns, carbon dioxide, fuel, syrup and beverage ingredients, and other items necessary for the operation of a bottling business. The category does not include bottles, cases, coolers and other types of vending machines which were included in the headings "Coolers and Dispensing Equipment" and "Containers". Supporting the valuation are affidavits of Mr. Berenguer and Mr. Diaz which recite the fair market valuation as being \$720,098.00 but no records have been submitted in support thereof. Mr. Berenguer states "that the actual market value was considerably in excess of said amount for the reason that many of the items carried in the inventory were of a class or kind not manufactured in the Republic of Cuba and for which importation permits had been denied for more than one year prior to the seizure and that therefore it is difficult for him to estimate the fair market value of items of which he had an inventory and which were readily saleable to others needing such item but which he was unwilling to sell and thus deprive his Company of the use of same".

The financial statements for the years 1958, 1959 and up to September 30 for the year 1960 record inventories as \$435,768.25, \$523,284.07 and \$320,088.88. These inventories include cooler, dispensers and vending machines for resale which are not included in Mr. Berenguer's calculation. In his demand on the Government of Cuba on October 26, 1960, Mr. Thompson included values for sugar, ingredients, syrup, concentrate and bottled product, and miscellaneous (including all kinds of spare parts) which totalled \$428,753.55.

On the basis of the entire record, the Commission finds that the most appropriate value for the inventories on October 24, 1960 is \$428,753.55.

9. Accounts Receivable

Claimant now asserts \$827,280.00 as its accounts receivable at the time of loss. In this connection it has submitted an affidavit of Juan M. Diaz, previously mentioned, who sets out that the enterprise's cash business represented about 60% of the approximate 14,000,000 case annual value of business, and credit for goods and container deposits about 40%.

Attached to Mr. Diaz's affidavit are detailed lists of Accounts Receivable as of August 31, 1960 which were the last accounts receivable reports made prior to expropriation. These lists were made by the managers of the Artemisa, Santa Clara, Camaguey and Santiago de Cuba plants, and the Matanzas sub-warehouse. Claimant has not located any similar reports for the Havana plant and General Office in Havana. Mr. Diaz, however, avers that he knows the last consolidated sum of accounts receivable reported by the Havana General Office on September 30, 1960, which included the Havana accounts receivable, so that he believes he can estimate with reasonable accuracy the aggregate of accounts receivable owed to claimant on about September 30.

The figures supplied by Mr. Diaz are as follows:

<u>Accounts Receivable at</u>		<u>Total</u>
<u>Artemisa Plant</u>		
Distributor Agents	\$ 17,351.79	
Local Trade Accounts	4,500.84	
Schools	217.90	
Sampling	2.40	
Compliments	72.96	
Coolers and Dispensing Equipment	<u>54,151.10</u>	
	\$ 76,296.99	
Adjustment - Add Salesman Debit	<u>234.12</u>	\$ 76,531.11
<u>Matanzas (Sub-warehouse under Havana Plant)</u>		
Coolers and Dispensing Equipment	\$119,230.35	
Adjustment - Deduct Dealer Credit	<u>41.58</u>	119,188.77

Santa Clara Plant

Distributor Agents	\$ 72,232.72	
Local Trade Accounts	1,234.46	
Sampling	288.84	
Coolers and Dispensing Equipment	<u>46,864.67</u>	
	\$120,620.69	
Adjustment - Deduct Dealer Credit	<u>322.28</u>	\$120,298.41

Camaguey Plant

Distributor Agents	\$ 64,728.06	
Local Trade Accounts	18.00	
Sampling	114.12	
Coolers and Dispensing Equipment	<u>98,832.74</u>	163,692.92

Santiago de Cuba Plant

Distributor Agents	\$ 49,951.43	
Local Trade Accounts	2,297.18	
Coolers and Dispensing Equipment	<u>24,024.14</u>	<u>76,272.75</u>

Sub-total \$555,983.96

Total Havana estimated from Management reports at September 30, 1960 175,099.62

General Office Havana, estimated

Miscellaneous Accounts Receivable at September 30, 1960 96,196.76

Total \$827,280.34

In his letter of October 26, 1960 to the Cuban Government, Mr. Thompson listed the assets of claimant in Cuba and the amount set out for Accounts Receivable was \$731,083.58. The same figure was entered in the unaudited financial statement of September 30, 1960 for these accounts.

The Commission finds that the most appropriate value of the Accounts Receivable is that in the September 30, 1960 financial statement and Mr. Thompson's letter and that claimant suffered a loss of \$731,083.58 on October 24, 1960 for the Accounts Receivable.

10. Cash and Bank Accounts

Claimant asserts \$988,442 as its loss in connection with cash and deposits in banks in Cuba. Mr. Diaz has submitted an affidavit in this connection setting out the fact of his audit of claimant's books of accounts compiled by accountants under Mr. Noel Perez, the Controller. These included

Mr. Juan Mir, now deceased, who made a daily cash report. His report for October 24, 1960 has been submitted. The bank deposits listed thereon and taken by the Government of Cuba on October 24, 1960 are as follows:

<u>Acct. No.</u>	<u>Bank</u>	<u>Location</u>	<u>Amount</u>
101-1P-2035	The First National City Bank (New York)	Havana	\$ 43,321.29
101-1	The First National City Bank (New York)	Santiago	5,858.20
101-2	The Royal Bank of Canada	Santa Clara	903.88
101-3	The Bank of Nova Scotia	Camaguey	6,328.27
102-1	The First National City Bank (New York)	Havana	49,000.00
102-1	The First National City Bank (New York)	Santiago	14,800.00
102-2	The Royal Bank of Canada	General Office	826,101.20
102-2	The Royal Bank of Canada	Santa Clara	14,750.00
102-3	The Bank of Nova Scotia	Camaguey	9,900.00
102-4	Banco Continental Cubano	Artemisa	5,750.00
102-10	(Petty Cash)	Cuba	<u>5,200.00</u>
			\$981,912.84

The above bank accounts are supported by bank statements which are in somewhat different amounts but tend to show the relative consistency and stability of the accounts in comparison with Mr. Mir's statement. One item in the Mir report is slightly higher due to denial of foreign exchange.

On the basis of the entire record, the Commission finds that the claimant's bank accounts, taken by the Government of Cuba on October 24, 1960 were in the aggregate amount of \$981,912.84.

No allowance is made for a Royal Bank account entitled "West Indies Region" in the amount of \$6,529.82 nor for an account of \$2,584.58 in Barclay's Bank D.C.O., Barbados, as it is not shown that these were taken by the Government of Cuba. The latter account in fact was not here claimed.

11. and 12. Extraordinary Expenses Including Assignments

Claimant seeks reimbursement in the amount of \$105,623 for expenses described by it as extraordinary. These are in two categories:

Assignment of claims for taking of property from:

R. M. Thomas (now deceased)	\$30,815.05	
Robert J. Thompson	18,610.00	
David E. Berenguer	<u>18,738.47</u>	\$ 68,163.52
Proposed purchase of land	\$35,000.00	
Preparation of building plans	<u>2,460.00</u>	<u>37,460.00</u>
		\$105,623.52

In connection with the assignment of claims, claimant sets out that in 1960 it entered into agreement with Messrs. Thomas and Berenguer, United States citizens, and Robert J. Thompson, a Canadian citizen, to protect them from any financial loss with respect to their personal property.

On October 25, 1960 Mr. and Mrs. Thomas were absent from Cuba and Mr. Berenguer left on October 29, 1960, taking only hand luggage.

On January 30, 1961 Mr. Thomas made an assignment to claimant of his interest in personalty left in Cuba valued at \$30,815.05; and on February 13, 1961 Mr. Berenguer executed a similar assignment as to personalty in Cuba valued at \$18,738.47. Each assignment is accompanied by an itemized list of personalty. In an affidavit of November 1, 1968, Charles W. Adams, Vice President of claimant, avers that payment was made to Messrs. Thomas and Berenguer in the specified amounts.

The Commission finds that the personal property of Messrs. Thomas and Berenguer, officers of the claimant, was also taken by the Government of Cuba on October 24, 1960, and the Commission concludes that they suffered losses within the meaning of Title V of the Act as a result of the taking of their property by the Government of Cuba.

Thereafter, and prior to filing of this claim, Messrs. Thomas and Berenguer assigned their claims against the Government of Cuba to claimant. The Commission finds that \$30,815.05 and \$18,738.47 represents the fair value of the property taken in each instance. Accordingly the Commission finds that claimant succeeded to losses in the aggregate amount of \$49,553.52 within the meaning of Title V of the Act.

With respect to claim based on an assignment by Robert J. Thompson in the amount of \$18,610.00, the claimant and Mr. Thompson affirm that he is

not a national of the United States. Title V provides for determination of claims that have been continuously United States owned from the date such claims arose. Accordingly, the Commission is constrained to and hereby does deny this item of claim.

Regarding the second category of extraordinary expenses, added to the claim on December 24, 1968, claimant states that Embotelladora, apparently in 1959, decided to build a plant in Holguin. A property was selected and an oral agreement was made with the owner, whose exact name is not recollected, to purchase the land for \$35,000.00. Thereafter it appears that the Government of Cuba proposed to expropriate the land and deed it to claimant, whereupon claimant states it secretly paid \$35,000.00 to the owner who was to deed it to claimant or through the Cuban Government assist Embotelladora to acquire the land.

Thereafter claimant states it expended \$2,460.00 for the preparation of preliminary plans for a new plant. It is said that the Cuban Government then precluded further acquisition of realty by American companies. This item was reported as an asset, Building under Construction, by Embotelladora on June 29, 1960, to the United States Embassy.

Nevertheless, the uncertainty surrounding this element of claim, including name of owner, as well as uncertainty as to record title, compels the Commission to conclude that claimant has not established that it suffered a loss in this connection as a result of actions of the Government of Cuba. Accordingly, this item of claim is denied.

13. Going Concern, Good Will, etc.

Claimant has asserted a loss in the amount of \$17,807,042.00 for the value of its business over and above the value of its tangible assets. The asserted value is the difference between the claimed value of the assets (\$23,830,418.00) and \$41,000,000.00 (at one time the total amount claimed).

Claimant has submitted an appraisal of the Cuban enterprise by Charles N. Battle & Associates which determined the value of the Cuban business by comparison with a Coca-Cola bottling company sold in Miami, Florida in 1963. Although no value is stated for the tangible assets of the Florida

company, it appears that \$11,500,000.00 was paid for that company which had several bottling plants in that area. On the basis of the average net income for the Miami company, the purchase price was approximately 60 times its average net income. The purchase price was also approximately \$7.00 per person residing in the Miami company's territory, and about \$2.00 per case sold in the year prior to the transfer of the company. The values for the Cuban business using the above measures would be -

1. 60 times average annual income (\$772,432.00)	-	\$46,345,920.00
2. \$7.00 per person for 7,000,000 pop.	-	\$49,000,000.00
3. \$2.00 per case, 13,742,000 expected to be sold in 1960	-	\$27,484,000.00

The appraiser averaged the three sums which were rounded to an average value of \$41,000,000.00 for the value of the Cuban business. Mr. Battle stated therefore that \$41,000,000.00 was a fair and accurate estimate of the Cuban business and affidavits of Coca-Cola company officials state that the business would not have been sold for less.

The use of such methods of determining the value of a Cuban enterprise does not appear a valid one inasmuch as the comparison is between the Miami market, with a per capita income of over \$1,900.00 and a predominantly urban population and the Cuban market with a per capita income of approximately \$300.00 and a large rural population. Moreover there is no information given as to the assets of the Miami corporation to afford a proper basis for comparison when different localities are considered. Nor does an average annual income of \$772,430.00 justify an investment of \$41,000,000.00.

The Commission has determined in many cases that the value of a going concern was 10 times the average annual net earnings. (See Claim of General Dynamics Corporation, Claim No. CU-2476.) However, in the instant claim, this amount would be \$7,724,320.00, using the average annual income computed by claimant, and less than the value of claimant's assets as determined herein. The going concern value on the basis of demonstrated earnings to investment is therefore minimal. Furthermore, without claimant's syrup formulas, the Cuban plants become ordinary bottling plants.

However, the Commission recognizes that claimant had suffered a loss over and above the value of its physical assets since the Cuban branch had been operating over forty years and had organized a Coca-Cola distribution system covering the island of Cuba. Based upon the complete record, the Commission finds that claimant suffered an additional loss therefor in the amount of \$3,500,000.00.

Claimant's Cuban losses, other than those to which it succeeded by reason of the assignments from its employees total \$18,033,653.60. The Commission has determined, however, that taxes due the Cuban Government in the amount of \$485,911.96, as reflected in the September 30, 1960 balance sheet must be deducted (see Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77). The asset loss is reduced therefore to \$17,547,741.64.

Summary

Claimant's losses within the meaning of Title V of the Act are found to be as follows:

On October 24, 1960	Land	\$ 2,265,881.00
	Buildings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	302,313.82
	Coolers & Dispensers	186,557.20
	Containers	2,005,000.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	981,912.84
	Added Value	<u>3,500,000.00</u>
		\$18,033,653.60
	Less Taxes	<u>485,911.96</u>
	Total Loss	\$17,547,741.64
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguer Assignment	<u>18,738.47</u>
	Total Losses	\$17,597,295.16

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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 24, 1960	\$17,547,741.64
January 30, 1961	30,815.05
February 13, 1961	<u>18,738.47</u>
Total	\$17,597,295.16

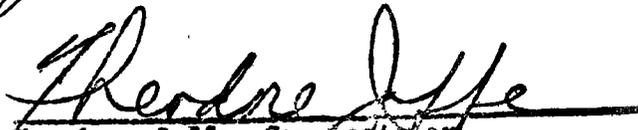
CERTIFICATION OF LOSS

The Commission certifies that THE COCA-COLA COMPANY suffered a loss, and succeeded to losses 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 Seventeen Million Five Hundred Ninety-seven Thousand Two Hundred Ninety-five Dollars and Sixteen Cents (\$17,597,295.16) with interest 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

SEP 22 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

Decision #

Cu - 6819

Cancelled

See Dec. # Cu - 6827