

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

IN THE MATTER OF THE CLAIM OF

MALCOLM S. BRU

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2029

Decision No. CU

1883

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 MALCOLM S. BRU, and is based upon the asserted loss of \$5,570.25, sustained in connection with the ownership of a stock interest in Compania Litografica de la Habana, S. A. (Havana Lithographing Company), hereinafter referred to as Havana Lithographing. Claimant has been a national of the United States since his birth in the United States.

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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of 800 shares of common stock of Havana Lithographing. The certificates representing the shares in question are Nos. CLHC 2212, 2216, 12329, 12672, 14062, 15852, 15853, 15854, 15855, 20113, 20120, 20121, 21108, 21109, 22446, 22447, 22448, and 22449.

The record discloses that Havana Lithographing Company (Compania Litografica de la Habana, S. A.) was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify 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 of 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. Therefore, claimant is entitled to file this claim based upon the shares in question which represent a debt of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Central West Company, Claim No. CU-3440.)

In determining the value of the interest owned by claimant in Havana Lithographing, the Commission has considered an unaudited balance sheet, with supporting schedules, as of July 31, 1960, an affidavit of the former President of Havana Lithographing, appraisals and valuations of the assets of the corporation prepared in 1960 and 1967, and insurance values for all assets. On the basis of all the evidence of record, the Commission finds that \$1,356,012.12 is the amount that would have been available at the time of loss for distribution among the 540,218 shares of common stock issued by Havana Lithographing. The Commission concludes that the dollar loss sustained in connection with the ownership of a common stock interest in Havana Lithographing was \$2.51 per share of common stock issued and held at the time of loss.

Accordingly, in the instant claim, the Commission finds that claimant, as holder of 1,800 shares of the common stock of Havana Lithographing, suffered a loss in the amount of \$4,518.00 within the meaning of Title V of the Act, as a result of the nationalization of Havana Lithographing by the Government of Cuba on October 13, 1960.

The remaining portion of the claim is based upon 2,700 shares of stock of Havana Lithographing issued to claimant after October 13, 1960, the date Havana Lithographing was taken by the Government of Cuba. The dates of purchase as to these shares are as follows:

<u>Number of shares</u>	<u>Date of Purchase</u>
500	September 19, 1961
200	October 11, 1961
800	October 16, 1961
700	December 20, 1961
500	December 27, 1967
Total <u>2,700</u>	

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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

The record in this claim contains the purchase receipts from claimant's broker and the original stock certificates for 2,700 shares of common stock of Havana Lithographing, bearing numbers CLHC 26472 through 26476, CLHC 26505 through 26514 and CLHC 26701 through 26712. The evidence of record clearly shows that claimant acquired the subject shares of stock on the dates of purchase set forth above.

Claimant was advised that pursuant to the statute, the owners of the subject stock on and from the date of loss to the date claimant acquired said stock and their United States nationality had to be established. No evidence in support thereof has been furnished. By letter of April 20, 1968, claimant advised the Commission as follows:

In regards to the claims for 2,700 shares of Havana Lithograph stock which were bought after October 13, 1960, please return the certificates in question as it is just too much bother to establish the original owners.

Accordingly, the Commission finds that claimant has not met the burden of proof as to this portion of the claim in that he has refused and failed to establish that this is a valid claim under the Act. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

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.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MALCOLM S. BRU 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 Four Thousand Five Hundred Eighteen Dollars (\$4,518.00) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

MAY 22 1968

Leonard v. B. Sittler

Leonard v. B. Sittler, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above-listed bonds/certificates may have been returned to claimant and no payment should be made until they are resubmitted.

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).)