

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

IN THE MATTER OF THE CLAIM OF

HELEN BRANDON
CLAUDIA MURIEL DESKE

Claim No. CU-2175

Decision No. CU 6765

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

George D. Webster, Esq.

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 Claude Brandon and HELEN BRANDON for \$301,767.00 based upon the asserted ownership and loss of improved real and personal property in Cuba and stock interests in Cuban corporations.

Claude Brandon, a national of the United States since birth, died intestate in New York City on June 29, 1967, leaving him surviving his widow, HELEN BRANDON, and his daughter, CLAUDIA MURIEL DESKE, as his sole heirs. Both have been United States nationals since birth. CLAUDIA MURIEL DESKE is added as a claimant herein.

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.

Claim is presented for the following losses:

House in Miramar, Marianao	\$ 65,500.00
Land in Miramar, Marianao	14,500.00
Household furnishings	12,000.00
Stock interest in Distribuidora de Fibra de Vidrio, S.A.	52,200.00
Stock interest in Colon Independent Trading Corp. (Colon)	13,950.00
Stock interest in Cuban Independent Trading Corp. (Cuban)	45,000.00
Stock interest in Minimax	<u>98,617.00</u>
	\$301,767.00

Based on the evidence of record discussed in detail below, the Commission finds that, pursuant to the Community Property Law of Cuba, HELEN BRANDON and her late husband owned the real property, the household furnishings, and interests in certain of the Cuban companies subject of this claim.

The Commission further finds that under New York law, upon the death of Claude Brandon, claimant HELEN BRANDON owned a 3/4 interest and her daughter, CLAUDIA MURIEL DESKE, acquired a 1/4 interest in the properties subject of this claim.

House, Land, and Furnishings

Based upon the evidence of record including a report from abroad, a report to the American Embassy in September, 1960, and affidavits of individuals familiar with the facts, the Commission finds that Claude Brandon and HELEN BRANDON owned the improved realty at 503 - 38th Street, Miramar, Marianao, and the furnishings therein.

The record indicates that Claude Brandon and HELEN BRANDON left Cuba on May 29, 1961

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

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

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record establishes that the land in question was purchased on October 27, 1943 for \$12,000.00, and thereafter Claude Brandon built a home thereon which he described as a two-story brick, cement covered house on over 1600 square meters of land, having about 13 rooms, and with white terrazzo floors throughout. He stated that the house was completed in September 1945, cost about \$46,000.00, that the landscaping and subsequent improvements cost over \$9,500.00, and that the value of the property prior to December 31, 1958 was between \$80,000.00 and \$90,000.00. The record also includes a photograph of the house.

Based on the entire record including the affiants who valued the improved property at \$75,000.00, \$80,000.00, and between \$75,000.00 and \$85,000.00, the Commission finds that its value on the date of loss was \$75,000.00.

With regard to the household furnishings, the record includes a detailed list with estimated values. The Commission finds that the asserted aggregate value of \$19,487.00 shown on this listing is fair and reasonable.

Colon, Cuban, Minimax

Based on the evidence of record and evidence available to the Commission, it is found that CLAUDE BRANDON and HELEN BRANDON owned 186 shares of Colon common, 70 shares of Cuban preferred, 5,040 shares of Cuban common, and 8,598 shares of Minimax.

In our decisions entitled Claim of Jack Clareman and Benet Polikoff, Executors of the Estate of Montgomery Clift, Deceased (Claim No. CU-1385); Claim of Benjamin Kovner (Claim No. CU-1015); and Claim of Libby Holman Reynolds (Claim No. CU-1384), which we incorporate herein by reference, we held that these companies were intervened or otherwise taken by the Government of Cuba on September 1, 1960; and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value of Colon common stock as \$4.0418 per share; the value of Cuban common as \$.600476 per share, and Cuban preferred as \$100.00 per share; and of Minimax as \$1.0023 per share.

On the basis of evidence of record in the instant case, it is found that Claude Brandon and HELEN BRANDON came within the terms of the Clift, Kovner, and Reynolds decisions, and that they suffered a loss in the aggregate amount of \$19,395.95 for the above-described stock interests within the meaning of Title V of the Act to which claimants herein have succeeded.

Fibra

Based on the evidence of record and evidence available to the Commission, it is found that Claude Brandon and HELEN BRANDON owned 14,116 shares of Fibra preferred and 551 shares of Fibra common, and that Fibra was intervened by the Government of Cuba on September 1, 1960 pursuant to Resolution 19103 of the Minister of Labor.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of

valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The record includes a balance sheet for Fibra as of December 31, 1959 which reflects the following:

A S S E T S

Current Assets

Cash in Bank and on Hand		\$ 5,661.22
Customers' Accounts	\$74,424.20	
Less: Notes Discounted	<u>19,348.90</u>	55,075.30
Loan Receivable - Inversiones, Guarina		2,950.25
Other Accounts Receivable		8,110.67
Inventory of Merchandise		75,320.16
Deposits and Guarantees		<u>1,021.10</u>
Total Current Assets		\$148,138.70

Fixed Assets

Shop Equipment	\$37,047.66	
Furniture and Fixtures	9,151.32	
Tools	3,572.86	
Improvements and Installation	30,394.60	
Automobiles	4,641.40	
Jeeps	<u>2,664.00</u>	
	\$87,471.84	
Less: Depreciation	<u>26,825.32</u>	
Total Fixed Assets		60,646.52

Investments

Cuban Railroad Co.	\$ 700.00	
National Acoustic Products, Inc.	<u>1,000.00</u>	1,700.00

Deferred Charges

Unexpired Insurance	\$ 2,643.12	
Organization Expenses (amortized \$1,228.50)	136.54	
Prepaid Expenses	100.00	
Trade Marks and Patents	<u>2,050.60</u>	
Total Deferred Charges		<u>4,930.26</u>

TOTAL ASSETS \$215,415.48

L I A B I L I T I E S

Current Liabilities

Accounts Payable - Vouchers		\$ 22,462.65
Loans Payable - Royal Bank of Canada	\$ 80,000	
Colon Ind. Trading	<u>12,000</u>	92,000.00
Notes Payable - National Acoustic		<u>6,758.65</u>

Reserve for Law #40, 1959

\$121,221.30
820.38

Total Current Liabilities \$122,041.68

Capital Issued

Preferred Shares	\$ 76,900.00	
Common Shares	<u>3,000.00</u>	79,900.00

Surplus

Balance, January 1, 1959	\$ 55,261.70	
Less:		
Law #40, 1959		
Profit Tax	\$2,050.97	
Income Tax	3,569.74	
M. Winthrop 1958 Bonus	1,176.91	
Dividend in Pref. Stock	<u>3,000.00</u>	
		<u>9,797.62</u>
		\$ 45,464.08
Loss for the Year		<u>31,990.28</u>

Net Surplus 13,473.80

TOTAL \$215,415.48

Accordingly, based on this balance sheet, the Commission finds that on the date of loss Fibra had a net worth of \$93,373.80.

The record indicates that Fibra authorized and had outstanding 76,900 shares of preferred stock and 3,000 shares of common stock, each of \$1.00 par value.

The Commission therefore finds that after deduction of \$76,900.00 as the value of the preferred stock, a net value of \$16,473.80 was available for distribution at the time of loss among the 3,000 shares of common stock. Thus, the net value per share of common stock was \$5.4913.

The Commission therefore finds that Claude Brandon and HELEN BRANDON suffered a loss on September 1, 1960 in the amount of \$14,116.00 in connection with their preferred stock interest in Fibra and \$3,025.70 in connection with their common stock interest in Fibra.

Recapitulation

The losses in this claim are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>HELEN BRANDON</u>	<u>CLAUDIA MURIEL DESKE</u>
House and Land	December 6, 1961	\$ 56,250.00	\$ 18,750.00
Furnishings	December 6, 1961	14,615.25	4,871.75
Colon, Cuban, Minimax	September 1, 1960	14,546.97	4,848.98
Fibra	September 1, 1960	<u>12,856.28</u>	<u>4,285.42</u>
		\$ 98,268.50	\$ 32,756.15

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>
HELEN BRANDON	September 1, 1960	\$27,403.25
	December 6, 1961	<u>70,865.25</u>
		\$98,268.50
CLAUDIA MURIEL DESKE	September 1, 1960	\$ 9,134.40
	December 6, 1961	<u>23,621.75</u>
		\$32,756.15

CERTIFICATIONS OF LOSS

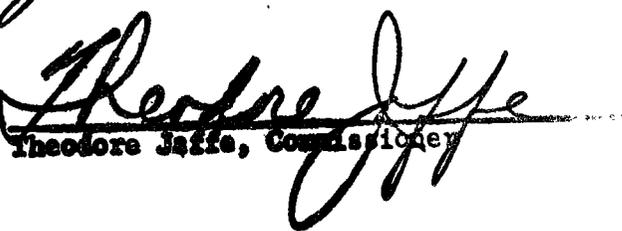
The Commission certifies that HELEN BRANDON succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-eight Thousand Two Hundred Sixty-eight Dollars and Fifty Cents (\$98,268.50) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that CLAUDIA MURIEL DESKE 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 Thirty-two Thousand Seven Hundred Fifty-six Dollars and Fifteen Cents (\$32,756.15) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 18 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 claimants establish retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended (1970).)