

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

IN THE MATTER OF THE CLAIM OF

EDNA K. BLUM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2517

Decision No. CU 3795

Counsel for claimant:

Walters, Moore & Costanzo

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$62,200.00, was presented by EDNA K. BLUM, based upon the asserted loss of a stock interest in a Cuban corporation and upon a Florida court judgment. Claimant has been a national 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.

The record establishes and the Commission finds that claimant owned a 50% interest in Taco Bay Lumber Company, S.A., a Cuban corporation. It further appears from the evidence of record that this Cuban corporation owned a bulldozer, a logging truck, saws, axes and tools, as well as a sawmill and timber rights with respect to 4,400,000 board feet of stumpage (standing timber) in the Province of Oriente, Cuba. On April 19, 1960, the Cuban Government expropriated the property of the Cuban corporation pursuant to Resolution No. 2375-E-60, under the Agrarian Reform Law of 1959.

The Taco Bay Lumber Company, S.A. 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 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. It has been held previously that a stockholder in such a corporation who qualifies as an American national is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that claimant and another stockholder of this Cuban corporation (Claim No. CU-2495 which will be determined on its own merits) each invested \$55,000.00 to form the Cuban entity on November 11, 1955. This sum of \$110,000.00 was accounted for as follows (the Cuban peso being on a par with the United States dollar):

Bulldozer	\$ 20,000.00
6-wheel drive logging truck	9,000.00
Saws, axes, tools, etc.	1,000.00
Sawmill with 500 board feet daily capacity	14,000.00
Reserve for fuel	3,000.00
Reserve for common labor	5,000.00
Reserve for corporate formation, etc.	3,000.00
Cost of stumpage (4,400,000 board feet)	<u>55,000.00</u>
Total	\$110,000.00

Upon consideration of the entire record, the Commission concludes that on April 19, 1960, the date of loss, the bulldozer, the logging truck, the various tools and the sawmill had depreciated to the extent of 22%, at the rate of 5% per annum customarily applied by the Commission to such property. Accordingly, the Commission finds that said assets of the Cuban corporation had an aggregate value of \$34,320.00 on the date of loss.

In the absence of evidence to the contrary, the Commission finds that the reserves for fuel and labor, aggregating \$8,000.00, had been exhausted and had no value on the date of loss. The Commission further finds that the expenses involved in forming the Cuban corporation, in the amount of \$3,000.00 did not constitute an asset of the Cuban corporation on the date of loss and particularly in view of claimant's allegations in her suit, discussed below, that she was induced to invest her money in the Cuban corporation by "false representations".

Based upon the evidence of record, including the evidence in the related Claim No. CU-2495, the Commission finds that the value of 1,000 board feet of stumpage involved in this claim on the date of loss was \$15.00. Accordingly, the Commission concludes that the value of 4,400,000 board feet of stumpage was \$66,000.00 on the date of loss.

Accordingly, the values of the Cuban corporation's assets on the date of loss were as follows:

Bulldozer, logging truck, tools, etc., and sawmill	\$ 44,000.00
Less depreciation	<u>9,680.00</u>
Net Value	\$ 34,320.00
Stumpage (4,400,000 board feet at \$15.00 per 1,000 board feet)	<u>66,000.00</u>
Total Assets	<u>\$100,320.00</u>

The Commission, therefore, finds that the value of claimant's 50% interest in the Cuban corporation's assets was \$50,160.00.

A portion of the claim is based upon a judgment in the amount of \$20,320.34, entered in a Florida court on May 31, 1961 in favor of claimant, plus interest from that date, computed by claimant to be \$7,200.00. The record shows that the judgment was entered against the other 50% stockholder in the Cuban corporation.

Claimant has stated that the judgment has never been satisfied in whole or in part. However, the evidence, including the record of the related Claim No. CU-2495, fails to establish that the judgment constituted "property" within the meaning of Section 502(3) of the Act, either as a charge upon property taken by Cuba, or as a debt of a nationalized corporation, or otherwise; and the record furthermore does not establish that the failure of claimant to receive payment on account of the judgment constituted a loss within the meaning of Title V of the Act. Accordingly, this portion of the claim is 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 the Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that EDNA K. BLUM 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 Fifty Thousand One Hundred Sixty Dollars (\$50,160.00) with interest thereon at 6% per annum from April 19, 1960 to the date of settlement.

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

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).)