

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

IN THE MATTER OF THE CLAIM OF

MANATI SUGAR COMPANY

Claim No. CU-2525

Decision No. CU - 6020

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Sullivan & Cromwell
by W. C. Pierce, 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 amount of \$54,721,773.00, was presented by MANATI SUGAR COMPANY based upon the asserted loss of property and investments in Cuba.

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.

An officer of the claimant corporation which was organized in 1912 under the laws of the State of New York has certified that at all times pertinent hereto at least 50% of claimant's outstanding capital stock has been owned by United States nationals and that on June 4, 1968 97.8% of the stockholders were residents of the United States and presumed to be United States nationals. The Commission holds that MANATI SUGAR COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for property owned by claimant and its three Cuban subsidiaries as follows:

Land	\$14,998,165.00
Buildings, equipment and other non-current assets	36,582,926.00
Personal property (net current assets)	130,626.00
Securities	178,418.00
Cia. Ganadera Becerra -50% interest	2,831,638.00
Total	<u>\$54,721,773.00</u>

The record establishes and the Commission finds that claimant was the owner of certain property in Cuba and the sole stockholder of the Cuban enterprises Compania Agricola Manati, S.A., Compania Terrateniente y Urbanizadora del Puerto de Manati, S.A., and Ferrocarril de Tunas, S.A.

and that claimant's property and the three Cuban corporations were nationalized by the Government of Cuba on August 6, 1960 under Resolution No. 1. The corporations were organized under the laws of Cuba and do not qualify as corporate "nationals of the United States" defined under Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) Therefore claimant is entitled to file this claim for the interest owned in the Cuban enterprises.

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.

According to the evidence of record, claimant owned a sugar mill located at the town of Manati, approximately 142,000 acres of land, a deep water wharf at the Port of Manati, warehouses, marine equipment, buildings, workshops, sugar warehouses, private railroad lines, rolling stock, tools, implements and other accessories of a sugar central. Claimant also owned the entire capital stock of Compania Agricola Manati, S.A., a land-holding company; Compania Terrateniente y Urbanizadora del Puerto de Manati, S.A. which owned a small property at the Port of Manati; and Ferrocarril de Tunas, S.A., a public railroad about 44 miles in length. In support of

the amount claimed, claimant has submitted three appraisals of the land, cultivations, buildings, equipment, workshops, railroad, electric plant and all other fixed assets of claimant and its subsidiaries. The record also contains affidavits of company officers, annual financial statements, a copy of the claim submitted to the Department of State in 1960, and photographs of the sugar mill and other company property.

On the basis of all the evidence of record, the Commission finds that the value of the fixed assets of claimant and its subsidiaries on August 6, 1960 were as follows:

Land and cultivations	\$21,066,807.00
Batey and factory buildings	3,100,000.00
Cane weighing & unloading equipment	180,000.00
Cane grinding equipment	1,800,000.00
Boiler equipment	1,000,000.00
Clarification Plant	600,000.00
Evaporating Plant	900,000.00
Crystallizers & centrifugals	700,000.00
Factory Pumps	150,000.00
Factory pipe lines & valves	300,000.00
Electric plant lines & motors	800,000.00
Furniture & fixtures	150,000.00
Laboratory	15,000.00
Port Installations	2,000,000.00
Telephone & Telegraph System	80,000.00
Carpenter, machine and locomotive shops and lime kiln	400,000.00
Transportation equipment	11,000,000.00
Properties outside Batey including hospital, launches and sugar loading equipment	2,500,000.00
Total	<u>46,741,807.00</u>

The Commission further finds that on August 6, 1960 the current assets of claimant and its three Cuban subsidiaries exceeded their current liabilities by the amount of \$130,626.57 and that the total value of the companies taken by the Government of Cuba on August 6, 1960 was \$46,872,433.57.

However, there were outstanding certain Collateral Trust Bonds in the amount of \$1,242,460.00 bearing interest at 6% per annum due April 30, 1965. These bonds were secured by First Mortgage Bonds issued by claimant, the mortgaged security being the claimant's property in Cuba which was taken by the Government of Cuba on August 6, 1960. The

Commission therefore finds that the amount of \$1,242,460.00 represents a lien on claimant's property in Cuba and must be deducted from the total amount determined to have been taken by Cuba. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$45,629,973.57 on August 6, 1960 within the meaning of Title V of the Act.

Investments

The record shows and the Commission finds that claimant had an ownership interest in the following corporations:

Ferrocarriles Occidentales de Cuba, S.A.	1,026 shares
Trans-Cuba Oil Company	15,000 shares
Cuban Venezuelan Oil Voting Trust	10,000 shares
Compania Ganadera Becerra, S.A. (50%)	4,630 shares
Kenaf Corporation	11,355 shares
Mercantil Manati, S.A.	1/9 interest

In the Claim of Ruth Anna Haskew, Claim No. CU-0849, the Commission determined that the value of the common stock of Ferrocarriles Occidentales de Cuba, S.A. which purchasers were required to buy under Cuban laws was the original cost price. Claimant paid \$102,600.00 for the shares, or \$100.00 per share and the Commission finds that claimant suffered a loss in the amount of \$102,600.00 for its ownership interest in Ferrocarriles Occidentales de Cuba, S.A. when its Cuban assets were taken on August 6, 1960.

In the Claim of D.R. Wimberly, Claim No. CU-3417 and Claim of Felix Heyman, Claim No. CU-0412, the Commission determined the values of shares of the Trans-Cuba Oil Company and the Cuban Venezuelan Oil Voting Trust to be \$0.1198 and \$0.11971 per share, respectively, on November 23, 1959, the date the companies were taken by the Government of Cuba. Accordingly, the Commission finds that the claimant suffered a loss in the amount of \$1,797.00 for its interest in the Trans-Cuba Oil Company and \$1,197.10 for its interest in Cuban Venezuelan Oil Voting Trust on November 23, 1959.

The Commission determined in the Claim of King Ranch, Inc., Claim No. CU-1507, that the owner of 4,630 shares or fifty per cent of the outstanding capital stock of Compania Ganadera Becerra, S.A. had suffered

a loss in the amount of \$1,689,039.37 on November 1, 1960 when that Cuban enterprise was taken by the Government of Cuba. In that decision, it was also stated that the Cuban company was indebted to this claimant in the amount of \$1,114,152.91 at the time of loss. Accordingly, the Commission finds that claimant suffered a loss in the amounts of \$1,689,039.37 for claimant's ownership interest in Compania Ganadera Becerra, S.A., and \$1,114,152.91 as the debt of a nationalized enterprise, the date of loss being November 1, 1960.

With respect to Kenaf Corporation, the Commission finds that claimant owned 11,355 shares or 27.365% of the outstanding capital stock of this corporation. The company was organized under the laws of the State of New York to engage in the production of kenaf but later went into the production of cattle food with machinery located on premises owned by claimant. The assets of the company were taken on May 25, 1960 and on December 14, 1962 the Kenaf Corporation was dissolved and its remaining assets liquidated. Accordingly, the Commission finds that claimant is entitled to file this claim for its ownership interest in the assets of Kenaf Corporation which had been taken by the Government of Cuba on May 25, 1960. On the basis of the documents filed with the Department of State by Kenaf Corporation in 1961, the Commission finds that the total loss sustained by Kenaf was \$22,382.95 and that claimant's interest in such loss on May 25, 1960 amounted to \$6,125.09.

Concerning Mercantil Manati, S.A., claimant asserts a 16.66% ownership and a loss in the amount of \$64,444.32 based upon a balance sheet for the Cuban company dated September 30, 1959. However, according to affidavits submitted in support of claimant's ownership interest, claimant invested the sum of \$50,000.00 in the company and on the basis of the balance sheet, which lists the capital investment as \$450,000.00, an investment of \$50,000.00 would equal 1/9 or 11.1% of the capital, not the 16.66% claimed. The Commission therefore finds that claimant had a 1/9

interest in Mercantil Manati which was taken by the Government of Cuba on August 6, 1960, resulting in a loss to claimant of \$42,962.88, based on net worth as reflected in the balance sheet.

Recapitulation

Accordingly, claimant sustained the following losses within the meaning of Title V of the Act.

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Cuban assets of Manati Sugar Company and Cia. Agricola Manati, S.A. Cia. Terrateniente y Urbanizadora de Puerto de Manati, S.A. and Ferrocarril de Tunas, S.A. Ferrocarriles Occidentales de Cuba	August 6, 1960	\$45,629,973.57
Trans-Cuba Oil Company	November 23, 1959	102,600.00
Cuban Venezuelan Oil Voting Trust	November 23, 1959	1,797.00
Compania Ganadera Becerra, S.A.	November 1, 1960	1,197.10
Kenaf Corporation	May 25, 1960	2,803,192.28
Mercantil Manati, S.A.	August 6, 1960	6,125.09
		42,962.88
Total		<u>\$48,587,847.92</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

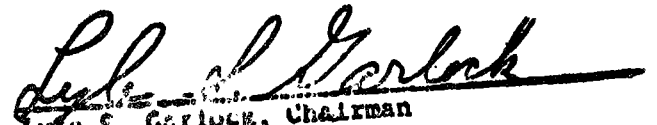
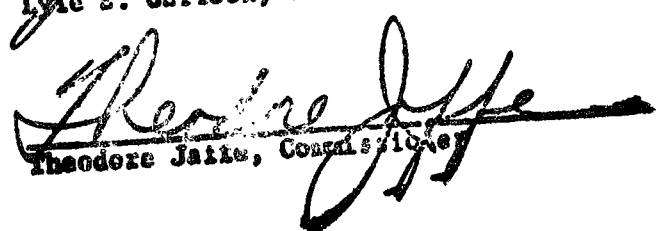
<u>FROM</u>	<u>ON</u>
November 23, 1959	\$ 2,994.10
May 25, 1960	6,125.09
August 6, 1960	45,775,536.45
November 1, 1960	2,803,192.28
Total	<u>\$48,587,847.92</u>

CERTIFICATION OF LOSS

The Commission certifies that MANATI SUGAR COMPANY 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 Forty-Eight Million Five Hundred Eighty-Seven Thousand Eight Hundred Forty-Seven Dollars and Ninety-Two Cents (\$48,587,847.92) 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

JAN 6 1971


Lyle E. Carlack, Chairman

Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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

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