

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

IN THE MATTER OF THE CLAIM OF

CARL MARKS & CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2545

Decision No. CU- 6820

Counsel for claimant:

Wikler Gottlieb Taylor & Howard
By Stephen M. Fields, 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 CARL MARKS & CO., INC. in the amount of \$7,638,928.17 based on the asserted ownership and loss of certain stocks and bonds issued by corporate enterprises and by the Republic of 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 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.

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.

Claimant corporation, by an authorized officer, has certified that it was organized under the laws of the State of New York and that at all times between 1958 and the filing of the claim all of the outstanding capital stock of all classes or other beneficial interests has been owned directly or indirectly by persons who were then nationals of the United States. Accordingly, the Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is based on the losses assertedly suffered by claimant as owner of stocks and bonds of 22 corporations, and bonds issued by the Republic of Cuba.

The record includes the affidavit of a partner in the firm of A.L. Menikoff & Co., Certified Public Accountants and auditors, setting out (1) the securities purchased by claimant prior to the respective dates of loss, and (2) those securities purchased subsequent to nationalization or other taking by the Government of Cuba, including the prices paid by claimant.

The corporations involved, organized under Cuban law, or if organized in the United States, not otherwise qualifying as United States nationals within the meaning of Section 502(1)(B) of the Act, supra, may be the subject of a claim for

ownership interest by an American stockholder (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33). Therefore claimant is entitled to file this claim for interests owned in Cuban enterprises.

The Commission finds that claimant was the owner of certain shares of stock and bonds, and suffered a loss within the scope of Title V of the Act, as a result of actions of the Government of Cuba.

The items of claim are discussed in two separate sections below. The values of almost all of the items have been previously determined by the Commission. Because the citations are so numerous, they are not included in this decision, but have been made part of the file in this matter. Accordingly, we do not again detail here the reasons or method used in determining the values previously found.

Claimant's numbering of items has been followed for easy reference. However, in several cases where discussion beyond a simple listing is required, the particular item is discussed at the end of the listing, out of strict sequence. The amount of loss stated includes interest where applicable. It may be noted that some bonds had been partly amortized.

SECTION A

Securities purchased prior to
and held as of date of loss

<u>Item</u>	<u>Entity and Security</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
(1)	Atlantica del Golfo Sugar Co. 5,040 shares of stock	August 6, 1960	\$171,642.24
(2)	Caribbean Sugar Co. \$11,500 (original face value) First Mortgage Bonds	August 6, 1960	4,807.17
(3)	Central Violeta Sugar Co. - None		
(4)	Cespedes Sugar Co. 100 shares preferred stock \$267,000 (original face value) First Mortgage Bonds	August 6, 1960	263.10 122,403.48
(5)	Compania Cubana 7,853 shares common stock	August 6, 1960	612,881.89
(6)	Consolidated Railroads of Cuba 420 shares preferred stock \$3,331,100 face value 3% Cumulative Income Debentures \$846,626 Accrual Certificates	October 13, 1960	114,240.00 3,960,944.38 846,626.00

<u>Item</u>	<u>Entity and Security</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
(7)	Cuba Mortgage Bank \$200 Series C Mortgage Bonds,) \$3,400 Series B Mortgage Bonds)	October 13, 1960	\$ 3,600.00
(8)	Cuba Northern Railway Company \$26,500 (original face value) First Mortgage Bonds	October 13, 1960	18,087.84
(9)	The Cuba Railroad Company 1,860 shares preferred stock \$7,000 (original face value) First Mortgage Bonds \$15,000 (original face value) Improvement & Equipment Bonds \$43,100 (original face value) First Lien & Refunding Bonds, Series A and B	October 13, 1960	186,000.00 3,450.02 10,270.20 29,418.34
(10)	Cuban Canadian Sugar Co. - see below		
(11)	Cuban Electric Company: 72,709 shares of stock, acquired at early and late dates, denied as Cuban Electric Co. qualifies as a United States national \$12,000 First and Refunding Mortgage Bonds (secured by nationalized property)	August 6, 1960	12,485.91
(12)	Cuban Telephone Company: (defunct) 112 shares of common stock 61 shares preferred stock and dividends	August 6, 1960	20,608.64 6,374.50
(13)	The Francisco Sugar Co. - see SECTION B		
(14)	Guantanamo Sugar Company - None		
(15)	Guantanamo & Western Railroad Co. \$57,000 First Mortgage Bonds 42 shares of common stock) 42 shares of preferred stock) see below	October 13, 1960	61,067.52 5,613.30 4,200.00
(16)	Havana Electric Railway Co. - see below		
(17)	Havana Lithographing Co. - None		
(18)	Manati Sugar Co. \$49,200 face value Collateral Trust Bonds (secured by nationalized property)	August 6, 1960	49,200.00
(19)	Metropolitan Building of Havana - see below		
(20)	Republic of Cuba \$200 4-1/2% External Secured Sinking Fund \$6,700 5% Internal Debt Bonds	December 31, 1960 May 1, 1961	204.50 6,700.00
(21)	Vertientes Camaguey Sugar Co. 11,007 shares of stock	August 6, 1960	510,665.36
(22)	Vicana Sugar Co. 10,523 shares of stock \$77,680 6% 20-year Convertible Non-Cumulative Income Debentures	November 12, 1959	10,523.00 77,680.00
(23)	West Indies Sugar Corporation 26,010 shares of stock, acquired at early and late dates, denied as West Indies Sugar Co. qualifies as a United States national		
			\$6,849,957.39

With respect to Item (10) above, Cuban Canadian Sugar Co., claimant asserts title to 497.60 shares of stock of this company, acquired prior to and later than the asserted date of loss. No information is available to the Commission regarding the operations of this entity in Cuba, actions of the Government of Cuba, or value of this company. Claimant indicates that this information could not be found, and placed a nominal value on the stock.

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) (1970).)

The Commission finds that claimant has failed to meet the burden of proof with respect to the loss resulting from any actions of the Government of Cuba, and the value of the stock of the Cuban Canadian Sugar Company at the time of any such loss. Accordingly, this item of claim is denied.

Item (15) Guantanamo & Western Railroad Co. stock: The value of this stock is determined at this 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 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. The Commission has concluded that 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.

Examination of the 1959 balance sheet of Guantanamo & Western Railroad Co. discloses the following:

Value of fixed and current assets, after deduction of depreciation of roads and equipment	\$10,997,367.00
Extent of liabilities, including preferred stock, mortgage bonds, trust certificates, long term debts, as well as current, accrued and deferred liabilities	<u>7,632,451.00</u>
Net Worth	\$ 3,364,916.00

Concerning the preferred stock, the Commission finds that each such share had a value of \$100.00 and first preference as to the assets of the Company and dividends. Further, in case of liquidation, distribution of assets would have been limited to the par value of \$100 per share. In the absence of evidence that dividends have not been paid to the preferred stockholders, the Commission concludes that each share had a value of \$100 at the date of taking, and that claimant's loss, based on 42 such preferred shares, was \$4,200 (as listed above).

With respect to the net worth available for distribution to common stockholders, the Commission finds that financial statements for years preceding 1959 show that the Railroad made a small profit in 1957, but in other years the operations ended in substantial losses. Under these circumstances, the Commission finds that the valuation of the common stock most appropriate to the property and equitable to claimant is the valuation based on the book value. There were outstanding 25,177 shares of common stock, and the book value therefore for one share was \$133.65. Accordingly, the Commission concludes that claimant suffered a loss with respect to the 42 common stock shares in the amount of \$5,613.30 (as listed above).

As to Item (16) Havana Electric Railway Company, claimant asserts ownership of 583 shares of common stock and of \$25,000 5-1/2% Gold Debentures, Series 1926, originally due in 1951.

The Commission has been informed by the Secretary of State of Maine that this company was incorporated in 1926, filed its last return on June 28, 1951 and was excused, having ceased to transact business June 8, 1953.

Available information indicates that in 1948 foreclosure proceedings were instituted against the Company. In 1950 the Cuban assets of the Company were acquired by the Cuban Government which turned them over to Autobuses Modernos, S.A., of Cuba. It further appears that the creditors of the Company were paid 23 cents on the dollar in reorganization proceedings which followed the foreclosure, and that the stockholders suffered a total loss. Also, in 1951, it appears that the Government of Cuba repossessed the enterprise Autobuses Modernos, S.A., and thus the facilities of the former Havana Electric Railway were taken over by the Government of Cuba. It does not appear that any loss was occasioned by actions of the Government of Cuba on or after January 1, 1959, and accordingly this item of claim is denied, as it is not within the scope of Title V of the Act.

As to Item (19), Metropolitan Building of Havana: Claim is asserted for \$3,000 7% First Mortgage Sinking Fund Gold Bonds, due January 1, 1945, issued by Metropolitan Building of Havana (Edificio La Metropolitana) which were acquired at early and later dates. The Government of Cuba issued its Law on Urban Reform on October 14, 1960. The record does not establish that on that date this rental building was still owned by the issuer of the bonds. On the contrary, it appears that this corporation failed to make interest payments before January 1, 1945 and defaulted on the principal also. It further appears that the building itself changed hands, through foreclosure or otherwise, and that the unpaid bonds in circulation after 1945 were to all intents and purposes worthless.

In the absence of evidence to show that the assets of this corporation were taken by the Government of Cuba subsequent to January 1, 1959, this portion of the claim must be and it is hereby denied.

SECTION B

Securities acquired subsequent to
Date of Loss and held as of date
of filing claim

The Commission finds that the claimant was the owner of a number of securities further described below, which were purchased after the date of loss.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The listing below reflects the entity, security and consideration paid as outlined in the aforementioned affidavit of a partner of A.L. Menikoff & Co., and in the Schedule B submitted.

<u>Item</u>	<u>Entity and Security</u>	<u>Consideration Paid</u>
(1)	Atlantica del Golfo Sugar Co. 88,677 shares of stock	\$ 38,266.75
(2)	Caribbean Sugar Co. \$2,000 (original face value) First Mortgage Bonds	80.00
(3)	Central Violeta Sugar Co. 12,763 shares	29,018.17

<u>Item</u>	<u>Entity and Security</u>	<u>Consideration Paid</u>
(4)	Cespedes Sugar Co. 4,439 shares preferred stock \$167,500 (original face value) First Mortgage Bonds	\$ 1,188.25 4,620.00
(5)	Compania Cubana 6,204 shares of common stock	12,408.00
(6)	Consolidated Railroads of Cuba 6,827 shares of preferred stock \$2,173,500 face value 3% Cumulative Income Debentures \$148,596 Accrual Certificates	18,552.63 35,504.85 92.88
(7)	Cuba Mortgage Bank \$700 Series B Mortgage Bonds	23.50
(8)	Cuba Northern Railway Company \$404,500 (original face value) First Mortgage Bonds	14,165.00
(9)	The Cuba Railroad Company 22,336 shares preferred stock \$708,000 (original face value) First Mortgage Bonds \$170,000 (original face value) First Lien & Refunding Bonds, Series B \$460,500 (original face value) First Lien & Refunding Bonds, Series A	117,938.35 16,357.50 4,133.75 13,579.38
(10)	Cuban Canadian Sugar Co. (<u>supra</u>)	
(11)	Cuban Electric Co. (<u>supra</u>)	
(12)	Cuban Telephone Company (defunct) 249 shares of common stock 60 shares of preferred stock	3,340.00 1,260.00
(13)	The Francisco Sugar Co. 21,478 shares of common stock. How- ever, this corporation qualifies as a United States national, and this item is denied.	
(14)	Guantanamo Sugar Co. 27,924 shares of common stock.	42,000.00
(15)	Guantanamo & Western Railroad Co. \$356,000 (face value) First Mortgage Bonds	14,080.00
(16)	Havana Electric Railway Co. (<u>supra</u>)	
(17)	Havana Lithographing Company 15,909 shares of common stock 390 shares of preferred stock	2,106.00 780.00
(18)	Manati Sugar Co. \$64,500 face value Collateral Trust Bonds) 57,623 shares of common stock, denied as this entity qualifies as a United States national	22,575.00
(19)	Metropolitan Building of Havana (<u>supra</u>)	
(20)	Republic of Cuba \$28,800 4-1/2% External Secured Sinking Fund \$13,900 5% Internal Debt Bonds \$30,000 Veterans Courts & Public Works \$27,000 Public Debt 4%	4,746.50 1,216.00 3,945.00 1,320.00

<u>Item</u>	<u>Entity and Security</u>	<u>Consideration Paid</u>
(21)	Vertientes Camaguey Sugar Co. 117,963 shares of common stock	\$ 75,355.36
(22)	Vicana Sugar Co. 12,376 shares of stock \$56,280 20-year Convertible Non- Cumulative Income Debentures	3,280.16 1,109.80
(23)	West Indies Sugar Corporation (<u>supra</u>)	<hr/>
		\$483,042.83

The Commission has determined that the prices paid per unit for the securities in Section B, purchased later than the date of taking, are less than the values determined as of the date of loss.

The Commission finds that claimant, as an assignee by purchase, acquired the claims for the losses sustained by the assignors of the securities in Section B but under the limitations provided in Section 507 of the Act (supra), is limited to \$483,042.83, the actual consideration paid for these shares.

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.

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the date on which claimant acquired the securities in Section B to the date on which provisions are made for the settlement thereof.

Claimant is unable to ascertain the date of purchase of each of the securities which it knows, however, was acquired subsequent to the date of loss. Accordingly, the Commission having examined the records submitted by claimant, including reports made to the Securities and Exchange Commission, has selected the date June 30, 1965, as appropriate for this purpose.

Accordingly, interest will be included in the Certification of Loss as follows:


<u>FROM</u>	<u>ON</u>
November 12, 1959	\$ 88,203.00
August 6, 1960	1,511,332.29
October 13, 1960	5,243,517.60
December 31, 1960	204,50
May 1, 1961	6,700.00
June 30, 1965	<u>483,042.83</u>
	\$7,333,000.22

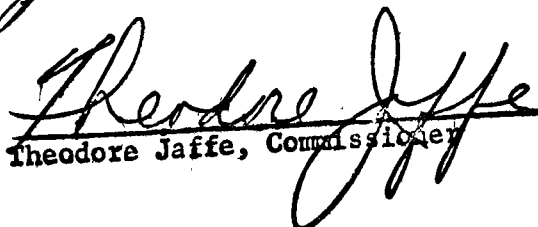
CERTIFICATION OF LOSS

The Commission certifies that CARL MARKS & CO., INC. suffered and succeeded to an aggregate 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 Seven Million Three Hundred Thirty-Three Thousand Dollars and Twenty-Two Cents (\$7,333,000.22) with interest thereon at 6% per annum from the aforesaid dates to the date of settlement.

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

SEP 30 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 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).)