

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

IN THE MATTER OF THE CLAIM OF

MYRTLE BROCK GOODWIN  
JOHN H. GOODWIN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2579

Claim No. CU-2580

Decision No. CU 4978

Counsel for claimants:

Sebastian Rivera R., Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$1,150,752.78, were presented by MYRTLE BROCK GOODWIN and JOHN H. GOODWIN, and are based upon the ownership and loss of real and personal property in Cuba owned by John C. Goodwin, S.A., a Cuban corporation, in which claimants owned stock interests. Claimants have been nationals 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 claims are based on loss of stock interests in a Cuban corporation known as John C. Goodwin, S.A., which owned land and improvements, located near the City of Holguin, Oriente Province, Cuba. Claimants have submitted stock certificates evidencing their ownership interests in the Cuban corporation.

On the basis of the evidence of record, the Commission finds that claimants herein are, and since prior to August 1, 1960, have been the owners of stock interests in John C. Goodwin, S.A. (hereafter referred to as Goodwin), including 73 shares of common stock owned by MYRTLE BROCK GOODWIN, evidenced by Certificates 41, 43, 44 and 45; and 80 shares of common stock owned by JOHN H. GOODWIN, evidenced by Certificates 5, 34, 35, 37, 49 and 50.

The Commission finds that on August 1, 1960, the Government of Cuba, through the National Institute of Agrarian Reform and the General Administration of Mills, intervened the properties of Goodwin, including the land and improvements, which were leased to Fidelity Sugar Company, S.A., as well as the properties of the lessee, including a mill known as Central San German, located near Goodwin land, and the machinery and other properties of certain sublessees. Cia. Azucarera Fidelidad, S.A., operator of Central San German, was thereafter listed as nationalized in Cuban Law 890, published October 13, 1961.

Goodwin was organized under the laws of Cuba, and does not qualify as a "national of the United States" within the meaning of 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 cent

in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Goodwin was organized in Cuba on October 28, 1928, with 200 shares of common stock outstanding. On that date a tract of land, formerly known as lot 3 of the Hacienda Sabanillo del Contramaestre and comprising an area of 279.162 caballerias (cabs), or approximately 9,252 acres, was transferred to the corporation by John C. Goodwin. As stated above, Goodwin leased the land, with improvements, to Fidelity Sugar Company, S.A. (hereafter referred to as Fidelity), which utilized approximately 188 cabs and subleased the balance of the improved real property to others. The sublessees included Dimas Figueras Acosta (24.515 cabs), Cia. Compania Agricola Constancia, S.A. (21.759 cabs), Berta Martinez Stewart (16.965 cabs) and Ramiro Blanco Abad (27.867 cabs). Fidelity paid the stipulated rental each year to Goodwin in accordance with the terms of a lease first executed between the parties in 1933, which continued in force until the date of taking, August 1, 1960, by the Government of Cuba. Fidelity submitted a yearly accounting report to Goodwin covering all income and disbursements incident to the leasing agreement between the parties.

Fidelity and others occupying the Goodwin property were engaged primarily in farming operations involving the utilization of approximately 198 cabs for cane sugar, 43 cabs for rice, and the balance, approximately 38 cabs, being utilized for pasture, yards, irrigation, roads and incidental uses. The evidence indicates that there were 148 buildings, including houses, huts, barracks, sheds, garages on the property; that an irrigation system was installed, with iron and concrete pipes, main canal with outlets, with subsequent enlargements to the irrigation system, including several tanks, motors and pumps; and that 5 bridges had been constructed on the property as well as roads, fences, yards and other improvements. The machinery, cattle,

tools or similar personal property were owned by Fidelity or others occupying the property, which employed the services of 667 employees.

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.

Claimants assert that the properties of Goodwin had a total value of \$1,465,810.00. They have submitted maps, plans, affidavits and other documentation on value. The record includes a yearly accounting report as prepared by Fidelity on August 31, 1960, concerning income and disbursements made for the year ending June 30, 1960, with a net sum of \$39,055.08 due and payable to Goodwin. This accounting report indicates that all accounts payable by Goodwin were paid currently when compiling yearly net income; that such debts as taxes paid to the Cuban Government and other liabilities were paid currently; and that no debts were outstanding at the time of loss but a credit balance for the year was apparently realized in the above amount.

Claimants have also submitted a report prepared by JOHN H. GOODWIN in August 1959 for the Cuban National Institute of Agrarian Reform (INRA). This report, prepared with the assistance of Fidelity and officers of INRA, includes several exhibits listing the lessee and sublessees, and the acreage and type of crops produced by each. The data include a detailed listing and

evaluations on the land, such as buildings, irrigation projects, roadways, bridges, fences and the like. This report indicates that in August, 1959, the improvements were valued at \$402,123.75 and the approximately 279 cabs of land were valued at \$1,063,686.25, or \$3,812.49 per cab, a total asserted value of \$1,465,810.00.

The Commission has carefully considered all of the evidence, including evidence available to the Commission concerning the value of similar land and improvements in other claims involving farming operations for sugar cane, rice or other types of land, and finds that the values most appropriate for the subject properties herein are reflected in the INRA report and the evidence available to the Commission concerning the value of similar properties. The Commission has consistently held that losses through investments in Cuban companies, such as Goodwin, are to be determined on the basis of their net worth, not merely the asset value.

The Commission finds, however, that at the time of loss Goodwin had no liabilities. The yearly accounting report of Fidelity reflected a credit balance of \$39,055.08 which, when adjusted by a payment of \$612.90 to a Cuban attorney employed by Goodwin, amounted to \$38,442.18 on August 31, 1960, or immediately after taking of Goodwin; and that such sum remained due and payable to Goodwin at the time of loss. Accordingly, the Commission also finds that the net worth of Goodwin at the time of loss was \$1,504,252.18. Inasmuch as there were 200 shares of stock outstanding, the value of a share of stock in Goodwin on August 1, 1960, the date of loss, was \$7,521.2609.

Accordingly, the Commission finds that claimants, holders of a total of 153 shares of common stock of Goodwin, suffered a loss within the meaning of Title V of the Act as a result of the taking by the Government of Cuba of the property of John C. Goodwin, S.A., as follows:

MYRTLE BROCK GOODWIN (73 shares)	\$ 549,052.05
JOHN H. GOODWIN (80 shares)	601,700.87

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), and in the instant claims it is so ordered.


#### CERTIFICATIONS OF LOSS

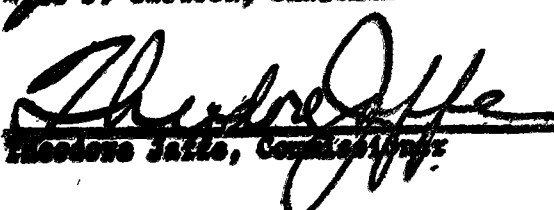
The Commission certifies that MYRTLE BROCK GOODWIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Forty-nine Thousand Fifty-two Dollars and Five Cents (\$549,052.05) with interest thereon at 6% per annum from August 1, 1960 to the date of settlement; and

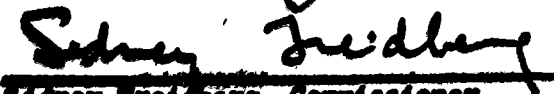
The Commission certifies that JOHN H. GOODWIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Hundred One Thousand Seven Hundred Dollars and Eighty-seven Cents (\$601,700.87) with interest thereon at 6% per annum from August 1, 1960 to the date of settlement.

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

JUN 10 1970

  
Louis S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Zeldberg, 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. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)