

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

IN THE MATTER OF THE CLAIM OF

ROBERT J. BAYER
SANFORD BAYER
MARTIN B. BAYER
MAYER L. WEISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2595
Claim No. CU-2596
Claim No. CU-2597
Claim No. CU-2796

Decision No. CU 4893

Counsel for claimants:

Firm of Herman Goldman
By Elias Rosenzweig, Esq.

PROPOSED DECISION

These claims against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, were presented by ROBERT J. BAYER, SANFORD BAYER, MARTIN B. BAYER and MAYER L. WEISS in the total amount of \$37,300.00 and are based upon the loss of ownership interests in a Cuban enterprise known as Hilos Piramide, S.A. Claimants have been nationals of the United States at all times pertinent to these claims.

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.

On the basis of the evidence of record, including stock certificates, affidavits and an Agreement, executed in 1958, the Commission finds that at all times pertinent to this claim there were 346 outstanding shares of stock of all classes issued by the Cuban corporation known as Hilos Piramide, S.A. and claimants herein owned 50% of the stock, as follows:

	<u>Shares</u>
ROBERT J. BAYER	28
SANFORD BAYER	29-1/2
MARTIN B. BAYER	28
MAYER L. WEISS	<u>87-1/2</u>
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The evidence of record establishes that Hilos Piramide, S.A. was intervened on August 14, 1961, when an interventor was appointed by the Government of Cuba. This corporation, organized under the laws of Cuba, 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. Accordingly, claimants herein are entitled to file these claims based upon their ownership interests in that Cuban enterprise. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

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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.

The claimants, in asserting their claims herein, have each submitted a claim based upon the par value of their shares of stock plus amounts based upon their ownership interests in asserted corporate surpluses of the Cuban enterprise at the time of loss.

The claimants have submitted cancelled checks, an Agreement executed with Cuban stockholders in 1958, affidavits and other evidence to establish that they invested \$17,300.00 for a 50% interest in Hilos Piramide, S.A., for which stock certificates, at \$100.00 par value per share, were issued to claimants, commensurate with their respective investments.

In Commission letter of June 6, 1967, the Commission suggested, among other things, that claimants submit additional evidence to establish the net worth of Hilos Piramide, S.A. at the time of loss, including evidence pertaining to the assets and liabilities of the Cuban firm. While claimants submitted data indicating that the assets included cash, accounts receivable, machinery, furniture and similar assets, no evidence was submitted to establish the amounts of such assets or the liabilities. Claimants indicated that balance sheets and other financial data were not available, being in Cuba.

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) (Supp. 1967).)

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Thereafter, in Commission letters written in 1967, 1968 and 1969, additional suggestions were made to claimants, through counsel, concerning the submission of evidence pertaining to the net worth of Hilos Piramide, S.A. at the time of loss in 1961. However, claimants did not respond to this correspondence or submit additional supporting evidence.

The evidence of record, including evidence in a State Department file, affidavits, statements of claimants and data in a related claim (Claim No. CU-2594, Plymouth Thread & Yarn Co., Inc.) discloses that Hilos Piramide, S.A. was doing business in Cuba at the time of loss in 1961, and that while the Cuban firm owed certain accounts to Plymouth Thread & Yarn Co., Inc., such accounts had been paid by the consignee to local banks for transmittal to the consignor.

Based on all the evidence of record, the Commission finds that Hilos Piramide, S.A., had a net worth equal to \$100.00 per share at the time of loss, and that claimants suffered losses within the meaning of Title V of the Act, as a result of the taking of this business enterprise by the Government of Cuba, in the aggregate amount of \$17,300.00, as follows:

ROBERT J. BAYER	\$ 2,800.00
SANFORD BAYER	2,950.00
MARTIN B. BAYER	2,800.00
MAYER L. WEISS	8,750.00

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

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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.

CERTIFICATIONS OF LOSS

The Commission certifies that ROBERT J. BAYER 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 Two Thousand Eight Hundred Dollars (\$2,800.00) with interest thereon at 6% per annum from August 14, 1961 to the date of settlement;

The Commission certifies that SANFORD BAYER 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 Two Thousand Nine Hundred Fifty Dollars (\$2,950.00) with interest thereon at 6% per annum from August 14, 1961 to the date of settlement;

The Commission certifies that MARTIN B. BAYER, 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 Two Thousand Eight Hundred Dollars (\$2,800.00) with interest thereon at 6% per annum from August 14, 1961 to the date of settlement; and

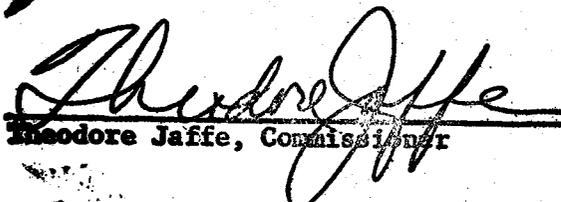
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The Commission certifies that MAYER L. WEISS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00) with interest thereon at 6% per annum from August 14, 1961 to the date of settlement.

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

MAY 27 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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).)

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