

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

IN THE MATTER OF THE CLAIM OF

WILLSON INTERNATIONAL, INC.  
CYNTHIA B. WILLSON and  
MARLON E. WILLSON

Claim No. CU -2839

Decision No. CU 4032

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$418,036.35, was presented originally by WILLSON INTERNATIONAL, INC., based upon the asserted loss of stock interests in two Cuban corporations.

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.

The record shows that the original claimant, WILLSON INTERNATIONAL, INC., was organized under the laws of Florida in 1966 and that at all pertinent times all of claimant's outstanding capital stock was owned by nationals of the United States. It further appears that all of the outstanding capital stock of Willson International, Ltd., Inc., also organized under the laws of Florida, was at all pertinent times owned by nationals of the United States. On February 21, 1966, when the original claimant was organized, it assumed all the assets and liabilities of Willson International, Ltd., Inc., including the property claimed herein. The Commission holds that the original claimant and its predecessor in interest are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Pursuant to the Commission's Decision No. CU-668, a portion of the claim therein involved for a debt in the amount of \$13,036.35, assertedly due CYNTHIA B. WILLSON, a native-born American, from one of the two said Cuban corporations, was incorporated into the claim herein. (See Claim of Marlon E. Willson and Cynthia B. Willson, Claim No. CU-2806, Amended Proposed Decision entered as the Final Decision under date of April 14, 1969.) Accordingly, CYNTHIA B. WILLSON has been added as party claimant and the claim has been increased from \$405,000.00, originally claimed, to \$418,036.35. Moreover, as will be noted hereafter, CYNTHIA B. WILLSON owned a stock interest in one of the two Cuban corporations. Inasmuch as it appears that her husband, MARLON E. WILLSON, a native-born American, was owed debts by the two Cuban corporations, he too has been added as party claimant.

The evidence establishes and the Commission finds that the original claimant's predecessor in interest owned all of the outstanding capital stock of Granja Los Americanos, S.A., hereafter called Granja. This corporation was organized in September 1957 by MARLON E. WILLSON to carry on the business of a poultry farm originally owned and operated by Mr. Willson. Upon incorporation of Granja, Mr. Willson became the sole stockholder of all of its capital stock which was subsequently transferred to the original claimant's predecessor in interest.

The Commission further finds that the original claimant's predecessor in interest owned 200 shares of stock in Avicola Willson, S.A., hereafter called Avicola, and that CYNTHIA B. WILLSON owned the remaining 10 shares of the outstanding capital stock of Avicola. This corporation was formed in November 1959 to carry on the business of a chick hatchery and farm supplies store, as well as to sell eggs and dressed poultry on a wholesale and retail basis. This business had been owned and operated previously by M. E. Willson & Company. Mr. Willson's stock interest in Avicola was transferred to the original claimant's predecessor in interest. It appears, however, that Mr. Willson did not transfer to the original claimant's predecessor in interest the debts owing to him by Granja and Avicola.

The record shows that on October 24, 1960 the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized Granja Los Americanos, S.A. It further appears from the record that on October 24, 1960 the Cuban Government also nationalized the related Avicola Willson, S.A.

Since Granja and Avicola were organized under the laws of Cuba neither qualifies 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. In this type of situation, it has been held previously that a stockholder in such a corporation 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 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.

#### Stock Interests

The evidence includes copies of balance sheets for Granja and Avicola as of December 31, 1959 and October 24, 1960 and detailed schedules accompanying the earlier financial statements; and copies of two affidavits, dated December 28, 1960, from a Cuban lawyer and former officer of the two corporations, relating to the pledge of the stock of Granja and Avicola to the Bank of China as security for a loan.

The record also contains photographs of the property; a letter, dated February 10, 1961, from MARLON E. WILLSON to the Department of State, setting forth the details of this claim; as well as a copy of the minutes of a meeting of the Directors of the original claimant.

The original claimant has asserted a loss of \$405,000.00 for its stock interests in Granja and Avicola. This amount is based upon asserted annual earnings of the two corporations in the aggregate amount of \$46,000.00 "for the last five years". The record, however, shows that Granja, organized in

September 1957, had sustained a loss in 1959, and that Avicola, organized in November 1959, had suffered extensive losses so that it was insolvent as of December 31, 1959. These matters, inter alia, were brought to the attention of the original claimant by letter, dated June 11, 1969, and explanations were requested. When no response was received, a "follow-up" letter, dated July 11, 1969, was forwarded to the original claimant. To date no reply or other communication has been received either from the original claimant or from any of the other claimants herein.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimants are those shown in the respective balance sheets for Granja and Avicola as of October 24, 1960. Those balance sheets show the financial conditions of the two corporations, as follows, the Cuban peso being on a par with the United States dollar:

GRANJA

Assets

Cash		\$	50.00	
Accounts Receivable			16,496.56	
Advances to Employees			5.00	
Inventories			<u>141,136.15</u>	
Total Current Assets				\$157,687.71
Buildings	\$63,975.00			
Less Depreciation	<u>5,164.09</u>	\$	58,810.91	
Machinery & Equipment	57,009.20			
Less Depreciation	<u>8,085.20</u>		48,924.00	
Furniture & Fixtures	205.00			
Less Depreciation	<u>64.85</u>		140.15	
Tools			908.37	
Leasehold Improvements			<u>14,197.96</u>	
Total Fixed Assets				122,981.39
Organization expense			4,545.81	
Deposits in Guarantee			<u>500.00</u>	
Total Other Assets				<u>5,045.81</u>
Total Assets				<u>\$285,714.91</u>

Liabilities and Capital

Bank Overdraft		\$ 95.10	
Notes Payable		8,721.00	
Accounts Payable		14,677.46	
Taxes Payable		17,548.00	
Accrued Expenses Payable		<u>183.32</u>	
Total Current Liabilities			\$ 41,224.88
Bank Loan Payable (long term)		\$ 25,300.00	
Stockholders Accounts Payable		<u>19,833.29</u>	
Total Other Liabilities			45,133.29
Capital:			
Issued and Paid		\$150,000.00	
Surplus	\$ 4,190.57		
Net Profit	<u>45,166.17</u>	<u>49,356.74</u>	
Total Capital and Surplus			<u>199,356.74</u>
Total Liabilities and Capital			<u>\$285,714.91</u>

AVICOLA

Assets

Cash		\$ 110.00	
Accounts Receivable (INRA)		7,188.50	
Notes Receivable		1,600.00	
Other Accounts Receivable		2,267.16	
Inventories		<u>7,560.00</u>	
Total Current Assets			\$ 18,725.66
Machinery & Equipment	\$19,993.63		
Less Depreciation	<u>1,915.39</u>	\$ 18,078.24	
Delivery Equipment	2,339.10		
Less Depreciation	<u>408.39</u>	1,930.71	
Furniture & Fixtures	3,453.42		
Less Depreciation	<u>1,092.84</u>	2,360.58	
Tools		35.70	
Leasehold Improvements		<u>1,978.88</u>	
Total Fixed Assets			24,384.11
Organization Expense		1,435.93	
Deposits in Guarantee		900.00	
Other		<u>133.04</u>	
Total Other Assets			<u>2,468.97</u>
Total Assets			<u>\$ 45,578.74</u>

Liabilities and Capital

Bank Overdraft	\$	448.69	
Notes Payable		2,468.60	
Accounts Payable		5,500.58	
Taxes Payable		5,012.78	
Deposits from Clients		<u>110.00</u>	
Total Current Liabilities			\$ 13,540.65
Stockholders Accounts Payable			25,109.32
Capital:			
Issued and Paid	\$	21,000.00	
Deficit - prior years	\$22,903.87		
Less Profit	<u>8,832.64</u>	<u>(14,071.23)</u>	
Total Capital and Surplus			<u>6,928.77</u>
Total Liabilities and Capital			<u>\$ 45,578.74</u>

The evidence of record discloses that the item, Deposits in Guarantee, appearing in the above balance sheets of Granja and Avicola, included a receivable due each of the two Cuban corporations from the Cuban Electric Company in the amount of \$500.00 each. Inasmuch as the records of the Commission show that the Cuban Electric Company is a national of the United States (see Claim of Cuban Electric Company, Claim No. CU-2578), Section 505(a) of the Act applies.

That section provides that a claim based upon a debt owing by an American entity "shall be considered only when such debt" was a charge on property taken by the Government of Cuba. It appears from the record that the items in question were mere deposits with a utility company operating in Cuba. There is no evidence to establish that these debts to Granja and Avicola were charges on property of the utility company taken by Cuba. On the basis of the evidence of record and in the absence of evidence to the contrary, the Commission finds that these debts did not constitute property within the meaning of Section 502(3) of the Act. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) The Commission, therefore, finds that the total assets of Granja and Avicola on October 24, 1960, the date of loss, were \$285,214.91 and \$45,078.74, respectively.

Accordingly, the Commission finds that the values of Granja and Avicola, or the excess of their respective assets over their respective liabilities, were \$198,856.74 and \$6,428.77 on the date of loss. Since the original

claimant was the sole owner of all the capital stock of Granja, it sustained a loss in the amount of \$198,856.74 with respect to that stock interest. The record shows that Avicola had 210 shares of stock outstanding. Therefore, each share of stock had a value of \$30.61318 on the date of loss, and the values of the 200 shares owned by the original claimant and the 10 shares owned by CYNTHIA B. WILLSON were \$6,122.64 and \$306.13, respectively, on the date of loss. It is concluded that the original claimant and CYNTHIA B. WILLSON sustained losses in those amounts with respect to their stock interests in Avicola.

#### Debts

The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

As noted above, CYNTHIA B. WILLSON has asserted a claim for a debt due from Granja in the amount of \$13,036.35. According to a recent letter, post-marked June 1, 1969, from MARLON E. WILLSON, President of the original claimant, his wife, CYNTHIA B. WILLSON, "invested" the \$13,036.35 in either Granja or Avicola "or both and would be shown in the statements as 'Loans Payable' or Stockholders Accounts Payable". In this connection it should be noted that an investment in a company is not the same thing as a loan to a company. In any event, an examination of the balance sheet for Granja as of October 24, 1960 disclosed that Granja's liabilities includes "Stockholders Accounts Payable" in the amount of \$19,833.29. As the former sole stockholder of Granja, MARLON E. WILLSON is the creditor thus identified, to which he agreed in his recent letter. The only other loan payable is "Bank Loan Payable (long term)", which represents the balance of the debt of Granja owing to MARLON E. WILLSON, as indicated in the record generally and supported by his recent letter.

There being no other entry in the balance sheet for Avicola as of October 24, 1960 or any other evidence to support the claim of CYNTHIA B. WILLSON for a debt, these matters were brought to the attention of MARLON E. WILLSON by the said letters of June 11, 1969 and July 31, 1969, to which no response has been received to date.



Based upon the entire record, the Commission finds that CYNTHIA B. WILLSON has failed to meet the burden of proof with respect to her claim for a debt in the amount of \$13,036.35. Accordingly, the portion of the claim for her asserted debt due from either Granja or Avicola is denied.

The record shows, as stated above, that on October 24, 1960, the date of loss, Granja and Avicola were indebted to MARLON E. WILLSON in the amounts of \$19,833.29 and \$25,109.32, respectively. The Commission, therefore, finds that MARLON E. WILLSON sustained losses in the aggregate amount of \$44,942.61.

Recapitulation

Claimants' losses on October 24, 1960 within the meaning of Title V of the Act may be summarized as follows:

<u>Claimant</u>	<u>Item of Property</u>	<u>Amount</u>
WILLSON INTERNATIONAL, INC.	Stock interest in Granja	\$198,856.74
	Stock interest in Avicola	<u>6,122.64</u>
	Total	<u>\$204,979.38</u>
CYNTHIA B. WILLSON	Stock interest in Granja	Total <u>\$306.13</u>
MARLON E. WILLSON	Debt due from Granja	\$ 19,833.29
	Debt due from Avicola	<u>25,109.32</u>
	Total	<u>\$ 44,942.61</u>

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 case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that WILLSON INTERNATIONAL, INC. succeeded to and 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 Hundred Four Thousand Nine Hundred Seventy-nine Dollars and Thirty-eight Cents (\$204,979.38) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement;

The Commission certifies that CYNTHIA B. WILLSON 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 Three Hundred Six Dollars and Thirteen Cents (\$306.13) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that MARLON E. WILLSON 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-four Thousand Nine Hundred Forty-two Dollars and Sixty-one Cents (\$44,942.61) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

OCT 15 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

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).)