

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

IN THE MATTER OF THE CLAIM OF

GEORGE E. SANFORD

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2923

Decision No. CU 2062

Counsel for claimant:

Walton, Lantoff, Schroeder, Carson  
and Wahl

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by GEORGE E. SANFORD and is based upon the asserted loss of \$188,643.61 sustained in connection with the ownership of a stock interest in Compania Cubana, S.A., and a bank account. Claimant has been a national 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 record contains stock certificate No. US621 issued to the claimant on February 10, 1960 for 2337 shares of capital stock in Compania Cubana, S.A. The record also contains a confirmation from claimant's broker disclosing the date of acquisition of the subject shares and the cost thereof. On the basis of all the evidence of record, including the foregoing certificate and confirmation, the Commission finds that the claimant owned, continuously from the date of loss to the presentation of this claim, 2337 shares of the capital stock issued by Compania Cubana, S.A.

On August 6, 1960, the Government of Cuba published Resolution No. 1 in its Official Gazette (pursuant to Law 851) which listed as nationalized Compania Cubana, S.A. Accordingly, the Commission finds that Compania Cubana, S.A. was nationalized by the Government of Cuba on August 6, 1960. Compania Cubana, S.A., was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including 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. 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 in the nationalized company. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The Commission concludes that as a result of the nationalization by the Government of Cuba of Compania Cubana, S.A., claimant suffered a loss within the meaning of Title V of the Act.

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 and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Among documentation submitted is an acceptable balance sheet of October 31, 1959 with supporting notes, which documentation reflects the following:

A S S E T S

Current Assets	1 9 5 9
Cash	\$ 195,207
Accounts receivable	156,844
Sugar on hand and in liquidation, less estimated expenses of shipping (\$1,068,000 pledged as security for bank loans, per contra)	1,869,905
Cuban Sugar Stabilization Institute--Estimated net amounts receivable for liquidation of sugar and molasses	<u>406,795</u>
Total Current Assets	<u>\$ 2,628,751</u>

Other Assets:

Materials and supplies on hand, valued not in excess of cost	\$ 470,110
Livestock--Valued below current market price	265,857
Advances to colonos for plantings, etc.	409,894
Instalments receivable on town lot sales--Past due	24,107
Guarantee deposit for taxes in dispute	-----

Total Other Assets \$ 1,169,968

Investments \$ 87,400

Notes Receivable--Inversiones Consolidadas del Este, S.A. -----

Property, Plant and Equipment \$18,970,101  
Less--Depreciation 11,491,417

Net Property Investment \$ 7,478,684

Deferred Charges:

Prepaid taxes, rent, interest, insurance, etc.	\$ 133,187
Repairs and expenses applicable to next crop--Net	122,408
Unamortized recapitalization expenses	90,106
Other	<u>7,604</u>

Total Deferred Charges \$ 353,305

Total \$11,718,108

L I A B I L I T I E S

Current Liabilities 1 9 5 9

Bank loans payable on demand, secured by sugar pledged, per contra	\$ 800,000
Accounts payable for liquidation of cane	283,819
Other accounts payable and accrued expenses	150,343
Taxes payable	10,525
Profits taxes	<u>184,428</u>

Total Current Liabilities \$ 1,429,115

Reserve to Compensate for Inequalities in Municipal Taxes of Future Years \$ 130,854

Capital Stock and Surplus:

Capital Stock:	
Authorized and outstanding	
1959--129,004 shares of no par value	\$ 6,026,500
Surplus	<u>4,131,639</u>

Total Capital Stock and Surplus \$10,158,139

Total \$11,718,108

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of outside creditor's claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities, less the unamortized recapitalization expenses of \$90,106.00, represents the owner's equity or the net worth of the company. The same result may be reached by adding the capital investment and surplus less the \$90,106.00.

The Commission has considered carefully all of the evidence of record, and finds that \$10,068,033.00 was the value of Compania Cubana, S.A. at the time of loss, at which time there were 129,004 outstanding shares of stock of the said company, and that the value of each share was \$78.0443.

Accordingly, in the instant claim, the Commission concludes that claimant, GEORGE E. SANFORD, as owner of 2,337 shares of capital stock, suffered a loss in the amount of \$182,389.53 within the meaning of Title V of the Act, as a result of the nationalization of Compania Cubana, S.A., by the Government of Cuba on August 6, 1960.

With respect to that portion of the claim based upon a bank account, claimant states that he has lost a bank account in Cuba having a balance in it of 4,621.69 pesos. The record establishes that loss as being the sum on deposit with the Royal Bank of Canada, Havana, Cuba on January 29, 1960. Claimant has stated under oath that he left Cuba in November 1959 and has not made any withdrawals from the account.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba, including bank accounts. In the absence of evidence to the contrary, the Commission finds that claimant's above described bank account, totalling 4,621.69 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Further, the Commission finds that on December 6, 1961, claimant's 4,621.69 pesos had a value of \$4,621.69, that he suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of his bank account by the Government of Cuba as of December 6, 1961. Therefore, the total loss sustained by claimant as a result of actions by the Government of Cuba was \$187,011.22.

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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the respective dates of loss to the date on which the provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that GEORGE E. SANFORD 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 One Hundred Eighty-Seven Thousand Eleven Dollars and Twenty-Two Cents (\$187,011.22) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

3 JUL 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

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).) CU-2923

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 TO TREASURY DEPARTMENT: The above listed certificate may have been returned to claimant and no payment should be made until it is resubmitted.