

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

IN THE MATTER OF THE CLAIM OF

FLAVIA CORRAL DE OLIVEIRA

Claim No. CU-2942

Decision No. CU-4081

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Macfarland, Ferguson, Allison & Kelly
By Jeremy P. Ross, Esquire

AMENDED PROPOSED DECISION

By Proposed Decision dated October 21, 1969, the Commission found that the Cuban Tobacco Co., S. A. owed a debt to claimant in the total amount of \$13,941.72 for unpaid dividends for which payment was to have been made as follows:

March 31, 1960	\$ 3,455.64
June 30, 1960	3,495.36
September 30, 1960	3,495.36
December 21, 1960	3,495.36

Accordingly, a loss in the amount of \$13,941.72 was certified by the Commission in claimant's favor.

A portion of the claim, based upon dividends which became due on October 15, 1959, was denied for claimant's failure to meet the burden of proof.

Claimant filed objections to the Proposed Decision of October 21, 1969, and submitted new evidence, the balance sheet of the Cuban Tobacco Co., S.A., dated December 31, 1959. On the basis of such new evidence, it is

ORDERED that the Proposed Decision of October 21, 1969, be and it is hereby amended as follows:

The Commission finds that the Cuban Tobacco Co., S. A., having 5,000 shares of stock outstanding, also owed to its shareholders \$18.92 per share

against the amount of \$94,581.26 to have been paid on October 15, 1959, as dividends. The Commission also finds that since claimant owned 441-1/3 shares of stock in the corporation, the amount of unpaid dividends due and payable October 15, 1959, amounted to \$8,350.02 which amount was lost due to intervention of the Cuban Tobacco Co., S.A. by the Government of Cuba on September 15, 1960.

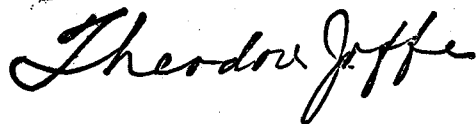
Accordingly the certification as restated below will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

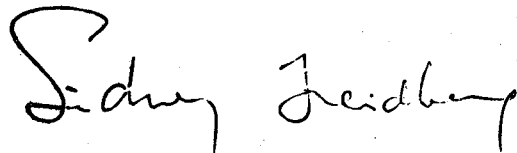
The Commission certifies that FLAVIA CORRAL DE OLIVEIRA sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-two Thousand Two Hundred Ninety-one Dollars and Seventy-four Cents (\$22,291.74), with interest thereon at 6% per annum from September 15, 1960, the date of loss, to the date of settlement.

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

NOV 26 1969



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).)

CU-2942

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

IN THE MATTER OF THE CLAIM OF

FLAVIA CORRAL DE OLIVEIRA

Claim No. CU -2942

Decision No. CU 4081

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Macfarlane, Ferguson, Allison & Kelly
By Jeremy P. Ross, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$22,949.34, was presented by FLAVIA CORRAL DE OLIVEIRA, based upon an asserted debt due to her from a Cuban company. 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 a copy of the minutes of a special meeting of stockholders of the Cuban Tobacco Co., S.A. (Cia de Tabaco de Cuba, S.A.) held on March 4, 1960 which establishes that claimant owned 441-1/3 shares of stock in the company.

The record discloses and the Commission finds that on September 15, 1960, the Cuban Tobacco Co., S.A. was intervened by the Government of Cuba, pursuant to Resolution No. 20260 of the Cuban Minister of Labor. It was later listed as nationalized on July 7, 1961.

Claim is based on claimant being a creditor of the Company for unpaid dividends. It is stated that the claim is not connected with any stockholder interest, which is not the subject of any claim.

The above mentioned Minutes disclose that the Company's profits shown on its 1959 balance sheet were \$186,023.95, and it was agreed then to distribute \$160,000 of said profits among the 5,000 shareholders, a dividend of \$32.00 per share. This was to be paid \$40,000.00 each on March 31, 1960, June 30, 1960, September 30, 1960 and December 21, 1960; the remainder of the profits \$26,023.95 being placed in Reserve Funds.

A Schedule attached to claimant's claim form states that pursuant to resolutions passed at annual stockholders' meetings, held in January or February 1959 and in March 1960, dividends were declared, against which some payments were made. It is said, however, that copies of the Minutes made at the 1959 stockholders meeting are not accessible to any of

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the claimants. The asserted dividends due, with payments and balance due, subject of this claim and those of the other stockholders, are set out as follows:

	<u>Amount Declared Payable</u>	<u>Paid</u>	<u>Balance Remaining Unpaid</u>
October 15, 1959	\$100,000.00	\$5,418.74	\$94,581.26
March 31, 1960	40,000.00	848.39	39,151.61
June 30, 1960	40,000.00	400.00	39,600.00
September 30, 1960	40,000.00	400.00	39,600.00
December 21, 1960	<u>40,000.00</u>	<u>400.00</u>	<u>39,600.00</u>
Totals	\$260,000.00	\$7,467.13	\$252,532.87

Thus it appears that each shareholder was owed \$7.83 per share against the amount to have been paid March 31, 1960 and was due \$7.92 per share against the amounts to have been paid on June 30, 1960, September 30, 1960 and December 21, 1960. In view of the foregoing, the Commission finds that the Cuban Tobacco Co., S. A. owed a debt to the claimant in the total amount of \$13,941.72 for which payment was to have been made as follows:

March 31, 1960	\$3,455.64
June 30, 1960	3,495.36
September 30, 1960	3,495.36
December 21, 1960	3,495.36

Such payments were not made.

The Commission has held that debts of Cuban corporations taken by the Government of Cuba 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]). Accordingly the Commission concludes that claimant sustained a loss within the meaning of Title V of the Act in the total amount of \$13,941.72 on September 15, 1960.

A portion of the claim is based upon dividends assertedly due on October 15, 1959. Claimant has not submitted evidence in support of that portion, but as noted above, has stated through counsel that copies of minutes of 1959 stockholders' meetings are not accessible. In view of these facts, the Commission finds that claimant has failed to meet the burden of proof as to this item and therefore the portion of the claim based on dividends assertedly due on October 15, 1959, must be and is hereby denied.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that FLAVIA CORRAL DE OLIVEIRA sustained 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 Thirteen Thousand Nine Hundred Forty-One Dollars and Seventy-Two Cents (\$13,941.72) with interest thereon at 6% per annum from September 15, 1960 to the date of settlement.

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

OCT 21 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.

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