

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

IN THE MATTER OF THE CLAIM OF

HUNTLEY E. COX

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2944

Decision No. CU-1395

Counsel for claimant:

Nicholson E. Buchwalter, Esq.

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 HUNTLEY E. COX, and is based upon the asserted loss of \$180.00, sustained in connection with the ownership of a stock interest in Central Violeta Sugar Company, S.A. 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 of 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. C08044 issued to the claimant on June 18, 1959 for 10 shares of capital stock in Central Violeta Sugar Company, 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, 10 shares of the capital stock issued by Central Violeta Sugar Company, S.A.

Central Violeta Sugar Company, 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 "(B) 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."

On October 13, 1960, the Government of Cuba published Law 890, in its Official Gazette, which listed as nationalized Central Violeta Sugar Company, S.A. Accordingly, the Commission finds that Central Violeta Sugar Company, S.A. was nationalized by the Government of Cuba on October 13, 1960.

The Commission concludes that as a result of the nationalization by the Government of Cuba of the Central Violeta Sugar Company, 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.

Claimant submitted no evidence as to value. However, included in 1961 Moody's Industrial Manual on page 2029 is a 1959 consolidated balance sheet which reflects the following:

Assets:	1959
Cash	\$ 124,933
Special deposits	5,738
Receivables	609,617
Sugar on hand	3,478,502
Growers adv., etc.	139,557
Matl. & suppl.	680,184
Other assets	42,444
Prepayments	118,456
Def. crop. exp.	<u>136,883</u>
Total curr. & wkg.	\$ 5,336,313
Plant & equip.	9,183,402
Depreciation	3,093,081
Net property	6,090,321
Growing cane, net	500,448
Other invest. cost	61,480
Deferred charges	<u>144,235</u>
Total	\$ 12,132,797

Liabilities:	1959
Bank loans, etc.	\$ 2,479,786
Unclaim. int., etc.	5,738
Accounts payable	132,264
Freight, exp., etc.	361,971
Due growers	279,252
Other accrd. liab.	165,781
Income taxes	<u>95,178</u>
 Total current	 \$ 3,519,969
Deferred credits	2,710
Cap. stock (\$9.50)	2,688,690
Capital surplus	652,694
Unap. earn. surp.	4,423,734
Appr. earn. surp.	<u>845,000</u>
 Total	 \$ 12,132,797

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity or the net worth of the Company. The record indicates that Central Violeta Sugar Company, S.A. authorized 300,000 shares of capital stock but had 283,020 shares outstanding at the time of loss.

The net assets available for distribution may also be calculated by adding the capital investment attributable to the capital stock, capital surplus, appropriated earned surplus, unappropriated, or undivided, earned surplus, and deferred credits. Accordingly, the calculation of net book worth is as follows:

Deferred credits	\$ 2,710.00
Capital stock (\$9.50)	2,688,690.00
Capital surplus	652,694.00
Unappropriated earned surplus	4,423,734.00
Appropriated earned surplus	<u>845,000.00</u>
 Net Book Worth	 \$ 8,612,828.00

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$8,612,828 was available for distribution, at the time of loss, among the 283,020 shares of capital stock issued by Central Violeta Sugar Company, S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Central Violeta Sugar Company, S.A. was \$30,4318 per share of the capital stock issued and held at the time of loss.

Accordingly, in the instant claim, the Commission finds that claimant, HUNTLEY E. COX, as holder of 10 shares of capital stock, suffered a loss in the amount of \$304.32 within the meaning of Title V of the Act, as a result of the nationalization of Central Violeta Sugar Company, S.A. by the Government of Cuba on October 13, 1960.

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.)


The Commission therefore concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

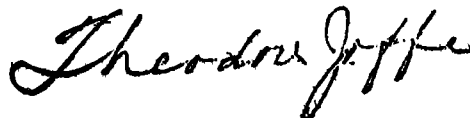
The Commission certifies that HUNTLEY E. COX sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Four Dollars and Thirty-Two Cents (\$304.32) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 26 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed securities may have been returned to claimant and no payment should be made until they are resubmitted.

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).)