

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

IN THE MATTER OF THE CLAIM OF

NICHOLAS INCANNELLA  
and  
ANNA INCANNELLA

Claim No. CU -7510  
Claim No. CU-7511  
Decision No. CU

**5687**

Under the International Claims Settlement  
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo: Dewey, Ballantine, Bushby,  
Palmer & Wood  
By William C. Bush, Esq.

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PROPOSED DECISION

Claimants, NICHOLAS INCANNELLA and ANNA INCANNELLA, who owned a stock interest in the Cia. Azucarera Atlantica del Golfo, assert a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$34,056.

On the basis of evidence in the record in the instant case, the Commission finds that NICHOLAS INCANNELLA comes within the terms of the Drye decision; that he was an American national at the requisite times; that he has been the owner of 100 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960, and that he suffered a loss in the amount of \$3,405.60 within the meaning of Title V of the Act.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

On the basis of evidence of record, the Commission finds that both claimants acquired 100 shares of Atlantica del Golfo stock by purchase on May 2, 1962 for a consideration of \$106.00.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FGSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimant NICHOLAS INCANNELLA as an assignee by purchase, acquired one-half of the claim for the loss sustained by the assignor of the last purchased shares, but under the limitations provided in Section 507 of the Act (supra), is limited to \$53.00, one-half of the actual consideration paid for these shares.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provides:

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) (1969).)

Claimant, ANNA INCANNELLA has not established that she has been a national of the United States at the pertinent times.

By Commission letter of March 20, 1968, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of June 4, 1968 and April 30, 1969, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter.

On October 31, 1969 and April 27, 1970, claimant was invited to submit the suggested evidence and was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted as to the nationality of ANNA INCANNELLA.

The Commission finds that claimant ANNA INCANNELLA has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba from a national of the United States. Thus, the Commission is constrained to deny her claim and it 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 Claim of Lisle Corporation, Claim No. CU-0644).

The Commission concludes, however, that the amount of loss sustained by claimant NICHOLAS INCANNELLA herein shall be increased by interest thereon at the rate of 6% per annum from the dates below, to the date on which provisions are made for the settlement thereof:

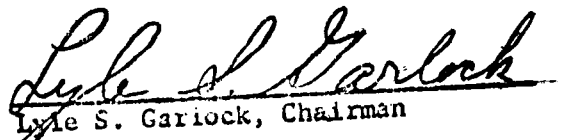
<u>FROM</u>	<u>ON</u>
August 6, 1960	\$3,405.60
May 2, 1962	<u>53.00</u>
Total	\$3,458.60

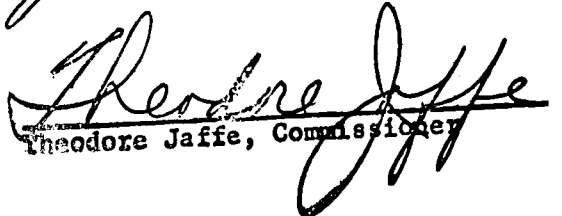
CERTIFICATION OF LOSS

The Commission certifies that NICHOLAS INCANNELLA 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 Thousand Four Hundred Fifty-Eight Dollars and Sixty Cents (\$3,458.60 ) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

JAN 20 1971

  
Lyle S. Gariock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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].)