

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

IN THE MATTER OF THE CLAIM OF

OTTO FREDERICK NIESS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-8736

Decision No. CU-6509

FINAL DECISION

This claim based on the asserted loss of stock interests in a Cuban corporation was denied by the Commission for lack of proof by Proposed Decision issued on August 4, 1971.

Claimant has subsequently submitted evidence of his United States nationality and ownership and purchase price of 10,000 shares of stock in Guantanamo Sugar Company.

In our decision entitled the Claim of Henrietta Mae Siegel (Claim No. CU-3478 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 \$49.7856.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Siegel decision; that he was an American national at the requisite times; that he has been the owner of 2,000 shares of stock in the Guantanamo Sugar Company since prior to August 6, 1960; and that he suffered a loss with reference to these shares in the amount of \$99,571.20 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.

Based on the evidence of record the Commission further finds that claimant acquired another 8,000 shares of stock in Guantanamo Sugar Company by purchase subsequent to August 6, 1960 for an aggregate cost of \$20,225.65 as follows:

<u>Date</u>	<u>No. of Shares</u>	<u>Cost</u>
March 14, 1963	1800	\$ 4,153.15
May 28, 1963	200	516.00
May 29, 1963	1000	2,580.00
July 18, 1963	500	1,353.75
July 31, 1963	500	1,353.75
September 24, 1963	300	774.00
October 8, 1963	2000	5,160.00
October 14, 1963	500	1,290.00
December 10, 1963	200	465.00
December 3, 1964	500	1,290.00
December 9, 1964	<u>500</u>	<u>1,290.00</u>
	8,000	\$ 20,225.65

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 FCSC 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, as an assignee by purchase acquired the claim for the loss sustained by the assignor of the last 8,000 shares but under the limitations provided in Section 507 of the Act (supra), is limited to \$20,225.65, the actual consideration paid for these 8,000 shares.

The Commission has decided that in certifications of loss 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 herein shall be increased by interest thereon at the rate of 6% per annum from the dates on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 99,571.20
March 14, 1963	4,153.15
May 28, 1963	516.00
May 29, 1963	2,580.00
July 18, 1963	1,353.75
July 31, 1963	1,353.75
September 24, 1963	774.00
October 8, 1963	5,160.00
October 14, 1963	1,290.00
December 10, 1963	465.00
December 3, 1964	1,290.00
December 9, 1964	1,290.00
	<u>\$119,796.85</u>

In view of the foregoing the following Certification of Loss will be entered.

CERTIFICATION OF LOSS

The Commission certifies that OTTO FREDERICK NIESS 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 Nineteen Thousand Seven Hundred Ninety-Six Dollars and Eighty-Five Cents (\$119,796.85) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

**SEP 1 1971**

  
Lyle S. Garlock, 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 or 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.

CU-8736

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OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

OTTO FREDERICK NIESS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-8736

Decision No. CU 6509

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$39,882.65, was presented by OTTO FREDERICK NIESS based upon the asserted loss arising from a stock interest in Guantanamo Sugar Company. Claimant stated that he 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.

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 provide:

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) (1970).)

The claim is based on 10,000 shares of Guantanamo Sugar Company, assertedly purchased from 1958 through 1964.

By several Commission letters claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

Claimant, however, has failed to establish his United States nationality and his ownership of the stock interest. Thus, the

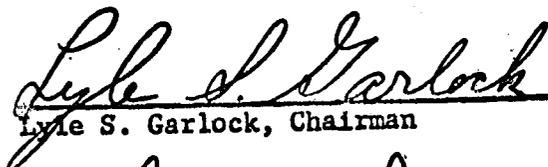
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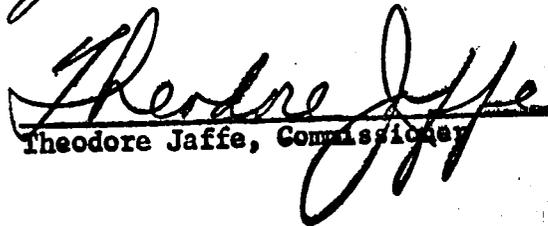
Commission is constrained to deny this claim and it is hereby denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

AUG 4 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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 (1970).)

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