

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

IN THE MATTER OF THE CLAIM OF

BRUCE C. PETTITT, INDEPENDENT EXECUTOR
OF THE ESTATE OF
BYRON B. PETTITT, DECEASED

Claim No. CU - 0408

Decision No. CU - 3577

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Jordan, Davis, Barlow & Lacy
By: Conway F. Jordan, Jr., Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated March 26, 1969, the Commission certified that BYRON B. PETTITT suffered a loss in the amount of Two Hundred Ninety-Seven Thousand Seven Hundred Ninety-Two Dollars and Fifty Cents (\$297,792.50) with interest thereon at 6% per annum from December 15, 1959 to the date of settlement based on his ownership interests in Tambores Arbuckle de Cuba, S.A. The decision was entered as final on April 25, 1969. Thereafter, evidence was submitted to the Commission to establish that the claimant, BYRON B. PETTITT, died on February 25, 1969, subsequent to filing this claim with the Commission and prior to issuance of the decision and that BRUCE C. PETTITT was appointed as the Independent Executor of his estate. Upon consideration of this matter, it is

ORDERED that the Final Decision be and it is set aside and the Proposed Decision is hereby amended as follows:

On the basis of the evidence of record, the Commission finds that BYRON B. PETTITT, the former claimant herein, died on February 25, 1969, and that BRUCE C. PETTITT was appointed as the Independent Executor of his estate and in this capacity succeeded to the claim of BYRON B. PETTITT, deceased, and accordingly, is substituted as claimant in this matter.

The certification of loss, as restated below, will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

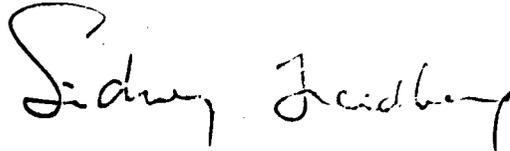
The Commission certifies that BRUCE C. PETTITT, INDEPENDENT EXECUTOR OF THE ESTATE OF BYRON B. PETTITT, DECEASED, succeeded to and suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Ninety-Seven Thousand Seven Hundred Ninety-Two Dollars and Fifty Cents (\$297,792.50) with interest thereon at 6% per annum from December 15, 1959 to the date of settlement.

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

28 OCT 1969



Theodore Jaffe, Commissioner



Sidney Freidberg, 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. 53115(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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

IN THE MATTER OF THE CLAIM OF

BYRON B. PETTITT

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0408

Decision No. CU 3577

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by BYRON B. PETTITT, a national of the United States since birth, in the amount of \$405,657.61. The claim is based upon the nationalization or other taking by the Government of Cuba of the corporation Tambores Arbuckle de Cuba, S.A. in Guanabacoa, Cuba.

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.

Tambores Arbuckle de Cuba, 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 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. The Commission has decided that in such instances stockholders who qualify as United States nationals under the Act may claim the value of their stock in Cuban corporations which have been nationalized or otherwise taken by the Government of Cuba.

The Commission finds on the basis of evidence of record that Dayton M. Arbuckle, a national of the United States since birth, was the sole shareholder of Tambores Arbuckle de Cuba, S.A., a corporation organized for the manufacture and sale of metal drums. The Commission further finds that although Tambores Arbuckle de Cuba, S.A. was not formally nationalized by the Government of Cuba until July 7, 1961, the enterprise was forcibly taken from claimant by agents of the Cuban Government on or about December 15, 1959; and concludes that Dayton M. Arbuckle sustained a loss with respect to his ownership interest in the corporation on December 15, 1959, as a result of the taking of the enterprise by the Government of Cuba. The Commission further finds that in early 1963, the certificates representing all of the outstanding capital stock of Tambores Arbuckle de Cuba, S.A. were delivered by Dayton M. Arbuckle to claimant as a gift, and that claimant thereby succeeded to

all the rights inherent in the ownership of the stock, including the claim against the Government of Cuba for the loss suffered by reason of its taking of the enterprise.

The claimed amount of \$405,657.61 assertedly represents the value of the assets of the corporation at the time of loss. 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.

In support of his claim, claimant has submitted a financial statement for Tambores Arbuckle de Cuba, S.A. as of November 30, 1958, prepared by an auditor in January 1965 from the most recent available records of the financial condition of the company. The listed assets (land, buildings, cash, machinery, equipment, raw materials, tools, office furniture, and a deposit with Cia. Electricidad) are valued at amounts totalling \$390,932.44. To this has been added \$14,725.17 described as operating expenses, and consisting of \$8,000.00 for organization expenses, \$4,833.42 for installation expenses, \$1,637.30 for general expenses, and \$254.45 for purchase expenses.

These, however, are really in the nature of "starting up" expenses since the plant was seized a short while after it was completed and had had only a trial run. It then operated for a year and a half before it was formally nationalized. The Cuban Government thus received the full benefit of all of these expenses. Accordingly, these will be included among the assets of the enterprise in the determination of its value, so that the total amount is \$405,657.61, as claimed.

However, in asserting a loss of that amount, claimant has failed to take into account the liabilities of the enterprise which, according to the financial statement as of November 30, 1958, totalled \$107,865.11 under the heading of accounts payable. In the absence of other evidence of value, the Commission concludes that book value, determined from the financial statement of November 30, 1958 by deducting liabilities from assets, is the most appropriate basis of valuation of the enterprise at the time of its taking. Accordingly, it is found that as sole owner of the enterprise Dayton M. Arbuckle suffered, and claimant succeeded to, a loss in the amount of \$297,792.50 as a result of the taking of Tambores Arbuckle de Cuba, S.A. by the Government of Cuba on December 15, 1959.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that BYRON B. PETTITT succeeded to a loss that was suffered 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 Two Hundred Ninety-seven Thousand Seven Hundred Ninety-two Dollars and Fifty Cents (\$297,792.50) with interest thereon at 6% per annum from December 15, 1959 to the date of settlement.

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

MAR 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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