

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

IN THE MATTER OF THE CLAIM OF

THE TAYLER CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0297

Decision No. CU - 1415

Counsel for claimant:

John B. Griffen, Esq.

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 \$299,789.67, was presented by THE TAYLER CORPORATION, and is based upon the asserted loss of security interests, machinery and debts owed by the Compania Cubana Primadera, S. A., a Liberian corporation operating in Cuba. Claimant corporation has made no statement as to its nationality of place of incorporation.

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) (Supp. 1967).)

Claimant corporation asserts a claim with regard to the Compania Cubana Primadera, S. A., stating that it acquired shares of common and preferred stock, accounts payable and unsecured loans of the corporation operating in Cuba as a result of a contract with the latter to build a mill in Cuba. Claim is also made for merchandise and machinery shipped to the Compania Cubana Primadera, S. A. in Cuba, which property is also asserted to have been taken by the Government of Cuba. By Commission letter of July 11, 1966, 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 October 14, 1966 and November 15, 1966, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received.

On August 17, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of

the existing record. On October 13, 1967, at counsel's request, claimant was granted an additional 45 days in which to submit the requested evidence. No evidence has since been submitted.

The Commission finds that claimant corporation has not met the burden of proof in that it has failed to establish ownership, by a national of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is 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

FEB 28 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

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, 32 Fed. Reg. 412-13 (1967).)

CU- 0297

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John B. Griffin, Esq.

AMENDED PROPOSED DECISION

The Commission issued a Proposed Decision in this matter on February 28, 1968, denying the claim inasmuch as claimant failed to sustain its burden of proof.

Claimant has now submitted acceptable evidence and the Commission's decision is amended herewith.

Section 502(1)(b) of the Act 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 record shows that claimant was organized under the laws of New York and that at all pertinent times all of claimant's outstanding capital stock was owned by native-born American citizens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(b) of the Act.

In the claim filed with the Commission on July 28, 1965, claimant originally described its losses as follows:

Stock of Cia. Cubana Primadera, S.A.		
2,270 shares 6% preferred	\$ 227,000.00	
Common stock	5,501.00	
Loans	61,000.00	
Merchandise	<u>6,288.67</u>	
		\$ 299,789.67

It may be noted that on October 6, 1961 claimant, in a letter to the Department of State, had asserted its losses as follows:

Securities of Cia. Cubana Primadera, S.A.:		
Common stock	\$ 5,501.00	
Debentures	<u>227,000.00</u>	\$232,501.00
Unsecured loan		61,000.00
Machinery on trial		108,861.40
Equipment shipped		20,784.55
Expenses		8,622.00
Debt for research		<u>12,412.00</u>
		\$444,180.95

By affidavit of October 7, 1969, William R. Tayler, president of claimant corporation, has offered a recapitulation as follows:

Loans	\$211,000.00
Worthless stock	111,000.00
Due for machinery, equipment and services rendered	<u>126,050.45</u>
	\$448,050.45

This total exceeds the claimed figure by \$148,260.78. Although claimant has not asserted this as an amendment, the Commission will so treat it.

Claimant has asserted that the Internal Revenue Service, after an audit, allowed as business losses the above-mentioned amounts claimed for "Loans" and "Worthless stock."

An examination of the file discloses that the items "Loans" and "Worthless stock" have been variously described. The record reflects the following loans, conversions and purchases:

January 1958 Debentures purchased (assortedly a loan)	\$150,000.00	
Unsecured loan	<u>61,000.00</u>	\$211,000.00
Debentures purchased	66,000.00	
Debentures purchased	11,000.00	
Common stock	<u>34,000.00</u>	\$111,000.00

However, the above debentures, totalling \$227,000.00, were converted to 2,270 shares of preferred stock having a par value of \$100.00, or \$227,000.00,

which is in the original claim. The common stock item appears to have increased from \$5,501.00 to \$34,000.00. The unsecured loan item of \$61,000.00 remains unchanged. The merchandise item has been increased by \$119,761.78, and consists of the following:

Machinery on trial	\$108,861.40
Equipment	12,912.67
Services rendered	<u>4,276.38</u>
	\$126,050.45

All of the above items are discussed in detail under specific headings below.

DEBENTURES

Claimant asserts that it loaned Cia. Cubana Primadera, S.A. \$150,000.00 in 1958 accepting in return \$150,000.00 worth of debentures of Cia. Cubana Primadera, S.A. Claimant also asserted that it was required to accept \$66,000.00 worth of Primadera debentures as part payment for equipment supplied to Primadera and later was required to convert the debentures totalling \$216,000.00 into 2,160 shares of Primadera 6% preferred stock. An inter-office memorandum of the claimant company dated January 24, 1958 discloses that the claimant company accepted debentures from Primadera because an agreement with the Export-Import Bank forbade Primadera from making a loan. Moreover, an examination of Cia. Cubana Primadera, S.A.'s combined 1958-59 balance sheet and notes thereto indicates that holders of the 6% Subordinated Debentures, due September 1, 1966, were offered the right to surrender their debentures in exchange for shares of 6% cumulative preferred stock having a par value equal to the principal amount of debentures surrendered and five-year warrants to purchase two shares of common stock at \$5.00 per share for each share of preferred stock so issued. As a result of this offer, \$2,539,000.00 principal amount of debentures were surrendered in exchange for 25,390 shares of 6% cumulative preferred stock and warrants to purchase 50,780 shares of common stock at \$5.00 per share. It does not appear that claimant company was either required or forced to accept the 6% cumulative preferred stock for the loan and as part payment for equipment supplied. At any rate the Cuban Government cannot be held responsible.

Since the debentures in the amount of \$216,000.00 were subsequently exchanged for 2,160 shares of 6% cumulative preferred stock, so much of the claim as was based upon a loan of \$150,000.00 and equipment supplied to Primadera in the amount of \$66,000.00 was thereby extinguished. The 2,160 shares of preferred stock acquired through these transactions together with 110 other shares of preferred stock acquired by the claimant company through purchase are treated under the heading "Stock Interest" below.

STOCK INTEREST

In our decision entitled the Claim of Martha P. Balme (Claim No. CU-8162 which we incorporate herein by reference), we held that the properties owned by Cia. Cubana Primadera, S.A. were nationalized or otherwise taken by the Government of Cuba on August 7, 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 preferred share as \$92.1936, leaving no value to the common stock.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Balme decision; that it has been the owner of 2,270 shares of preferred stock in Cia. Cubana Primadera, S.A. since prior to August 7, 1960; and that it suffered a loss in the amount of \$209,279.47 within the meaning of Title V of the Act.

Inasmuch as the common stock of Cia. Cubana Primadera, S.A. had no value on the date of loss, the portion of the claim based upon common stock must be and is hereby denied.

DEBT

Claim is also asserted for a debt owed by Cia. Cubana Primadera, S.A. arising out of a loan of \$61,000.00 (evidenced by cancelled checks and a letter to the claimant company from The National Bank of Westfield dated

November 12, 1963); merchandise shipped, and services rendered to Cia. Cubana Primadera, S.A. In further support of this item claimant submitted the affidavit of William R. Tayler, president of the claimant company; letter to the Department of State from the president of the claimant company dated October 6, 1961; letter to Cia. Cubana Primadera, S.A. from the president of the claimant company, dated April 5, 1960; and various unpaid invoices. The Commission finds that the balance due and owing the claimant on August 7, 1960, the date of loss, was \$187,050.45 as follows:

Loan		\$ 61,000.00	
Merchandise shipped to Cia. Cubana Primadera, S.A. on trial:			
Two Decorticators	\$ 34,617.40		
Pulp Blower	11,270.00		
Wave Line Plates	846.00		
Custom Purger	6,052.00		
Edge Decorticator	14,036.00		
Digester Doors	<u>42,040.00</u>		
			108,861.40
Machinery, equipment and personal services rendered:			
Machinery & equipment	\$ 12,912.67		
Services rendered	<u>4,276.38</u>		
			<u>17,189.05</u>
			\$187,050.45

The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning 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 finds that the loss sustained by claimant on August 7, 1960 on account of debts due from Cia. Cubana Primadera, S.A. was \$187,050.45.

RECAPITULATION

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Stock interest in Cia. Cubana Primadera, S.A.	\$209,279.47
Due from Cia. Cubana Primadera, S.A. for merchandise, machinery, equipment, services and loan	<u>187,050.45</u>
	\$396,329.92

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.

Accordingly, the following certification of loss will be entered and the remainder of the Proposed Decision as amended herein is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that THE TAYLER CORPORATION 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 Hundred Ninety-Six Thousand Three Hundred Twenty-Nine Dollars and Ninety-Two Cents (\$396,329.92) with interest at 6% per annum from August 7, 1960 to the date of settlement.

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

DEC 10 1960

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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.

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