

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

IN THE MATTER OF THE CLAIM OF

MARTHA P. BALME

Claim No. CU -8162

Decision No. CU

3458

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Cubana Primadera, S.A.

Counsel for Cia. Cubana Primadera, S.A.: Milbank, Tweed, Hadley & McCloy

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 MARTHA P. BALME based upon an interest in preferred stock and common stock issued by Compania Cubana Primadera, S.A. Claimant has been a national of the United States since her birth.

This is the first claim involving Cia. Cubana Primadera, S.A. The Commission notes that several other claims have also been filed with it by other stockholders; thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to August 7, 1960, has been the owner of three thousand three hundred forty-two (3,342) shares of common stock and sixty-six (66) shares of 6% preferred stock of Compania Cubana Primadera, S.A., evidenced by certificates Nos. 348 and P180.

The record discloses that Compania Cubana Primadera, S.A. was intervened on August 7, 1960. This corporation was organized under the laws of the Republic of Liberia and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon her ownership therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The subject company was engaged in the manufacture and sale of wallboard and related products from sugar cane bagasse. Its properties included a plant located at Francisco in the province of Camaguey, Cuba; a leasehold interest in the real property upon which its plant was constructed; a leasehold interest in an adjacent area for the storage of bagasse; accounts receivables; bagasse and other raw materials; supplies and inventories of finished goods; bank accounts; equipment and furniture; two automobiles; a small amount of petty cash and other miscellaneous items.

The company's authorized stock consists of 30,000 shares 6% preferred having a par value of \$100.00 and 1,500,000 shares of common stock, having a par value of \$1.00. There were outstanding on the date of loss 26,490 shares of 6% preferred stock and 1,132,000 shares common stock.

Although Compania Cubana Primadera, S.A. does not qualify as a national of the United States, it has submitted a claim (CU-2690) on behalf of certain consenting stockholders, and in this connection has submitted evidence as to the value of the company and its properties, asserting that the properties taken by the Government of Cuba had a value of \$4,555,363.00

The company has asserted its losses as follows:

1) Cash and Receivables	\$ 85,590.00
2) Inventories	625,858.00
3) Manufacturing and Plant Facilities at appraised value	<u>5,515,000.00</u>
Total Assets	\$6,226,448.00
Less, Net non-Cuban Liabilities	<u>1,671,085.00</u>
Value of Entire Ownership Interest	\$4,555,363.00

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.

The non-Cuban liabilities deducted by Cia. Cubana Primadera, S.A., from assets in Cuba are:

Export-Import Bank of Washington	\$1,500,000
First National City Bank	300,000
A. F. de Schulthess	50,000
Todd, Hedeon & Associates	214,690
Western Metals & Trading Company	129,626
Now known as Marbrook Corporation of Delaware	
Compania Primadera S.A.	33,037
Peat, Marwick, Mitchell & Co.	935
J. W. Hampton & Co.	297
6% Subordinated Debentures due September 1, 1966	90,000
6% Subordinated Debentures due June 1, 1965	190,000
7% Subordinated Debentures	<u>162,500</u>
Total Non-Cuban Liabilities	\$2,671,085
Claim on Performance Bond	<u>1,000,000</u>
Net Non-Cuban Liabilities	\$1,671,085

The record includes a copy of an audited balance sheet for Cia. Cubana Primadera, S.A., as of December 31, 1959, which reflects the following:

Assets

Current assets:	
Cash in banks and on hand	\$ 57,340.79
Note receivable	15,745.17
Accounts and advances receivable	12,504.71
Inventories, at lower of cost or market:	
Raw materials	536,476.20
Finished goods	"
Materials and supplies	<u>89,381.92</u>
	<u>625,858.12</u>
Prepaid expenses	<u>26,913.40</u>
Total current assets	738,362.19
Claim receivable on performance bond, less reserve for estimated uncollectible portion	1,000,000.00
Investment in Compania Primadera, S.A., affiliated company - 4,999 shares, at cost	4,999.00
Plant and equipment, at cost	4,615,004.05
Deferred charges, including interest, pre-operating and organization expenses	<u>1,115,218.69</u>
	<u>\$7,473,583.93</u>

Liabilities

Current liabilities:

Notes payable:

Banks

\$ 350,000.00

Other

123,550.38

473,550.38

Current portion of long-term debt

300,000.00

Accounts payable

681,855.63

Accrued expenses:

Interest

39,451.42

Professional fees

103,000.00

Other

24,293.25

166,744.67

Total current liabilities

1,622,150.68

Long-term debt:

Notes payable:

Export-Import Bank of Washington

1,500,000.00

Less portion due within one year - included in
current liabilities

300,000.00

1,200,000.00

Other

750,000.00

6% Subordinated Debentures, due September 1,
1966

90,000.00

6% Subordinated Debentures, due June 1, 1965

145,000.00

2,185,000.00

Stockholders' equity:

6% preferred stock, par value \$100.00 per share

Authorized, 30,000 shares.

Issued, 26,490 shares

2,649,000.00

Common stock, par value \$1.00 per share

Authorized, 1,500,000 shares.

Issued, 1,132,000 shares (1959)

1,132,000.00

Additional paid-in capital - represents excess of
proceeds from sale of shares of common stock
over par value

16,000.00

Deficit

(130,566.75)

3,666,433.25

\$7,473,583.93

In its statement to the Department of State on January 16, 1961, the company asserted the total value of its property in Cuba as of September 1, 1960 as \$6,290,937.55.

The appraisal which is the basis for the company's figure for the manufacturing and plant facilities was prepared by Parajon e Hijo, a professional appraiser. The plant and its equipment were valued solely on the basis of documentary materials furnished to Parajon e Hijo by the company. These materials include the following: 1) invoices and other original purchase and cost records covering virtually all components of the plant; 2) financial statements and audits; 3) Physical Work Progress Reports and Financial Progress Reports to the Export-Import Bank of Washington, D.C.; 4) contracts; 5) contemporaneous reports by engineers and others during construction; 6) blueprints, charts and diagrams of the plant and its equipment; 7) photographs of the plant and equipment; 8) maps; 9) other cost data compiled by the company. All values given are stated to be replacement values as of July 1960, when the plant was in the last stages of completion. No depreciation at all was applied, and in the opinion of Parajon e Hijo these valuations would have been the basis for insurable values in 1960.

The valuation of Parajon e Hijo is as follows:

Bagasse Department	\$ 280,000.00
Depithing	450,000.00
Pulp preparation	575,000.00
Soft board	950,000.00
Hard board	480,000.00
Specialties	300,000.00
Shipping & warehousing	25,000.00
Power plant	1,120,000.00
Buildings, foundations	850,000.00
Overhead & engineering	400,000.00
Experimentation prior to establishing the plant	40,000.00
Cost of experimental dry runs, estimated	<u>50,000.00</u>
Appraised value	\$ 5,515,000.00

On the basis of all the evidence of record, the Commission finds the value of the assets of Compania Cubana Primadera, S.A. on the date of loss to be as follows:

Cash in banks and on hand in Cuba	\$ 57,340.79
Note receivable	15,745.17
Accounts and advances receivable	12,504.71
Raw materials	536,476.20
Materials and supplies	89,381.92
Prepaid expenses	26,913.40
Investment in Compania Primadera S.A.	4,999.00
Plant and equipment	<u>5,515,000.00</u>

Total \$ 6,258,361.19

The valuation for plant and equipment is based upon the appraisal made by Parajon e Hijo. All other values are reflected in the December 31, 1959 balance sheet.

Two items listed under Assets in the December 31, 1959 balance sheet, namely, "Claim receivable on performance bond, less reserve for estimated uncollectible portion" and "Deferred charges, including interest, pre-operating and organization expenses", were specifically not offered for consideration by claimant. The Commission has reviewed the balance sheet submitted, and finds that the aforementioned items should not be considered as assets in arriving at the net worth of the enterprise.

On the basis of the entire record, the Commission finds that the value of the assets of Compania Cubana Primadera, S.A., taken by the Government of Cuba was \$6,258,361.19. According to the balance sheet of December 31, 1959, the corporation's liabilities including both current liabilities, long-term and other debts were \$3,807,150.68, resulting in a net value of the assets of \$2,451,210.51. Thus the total loss sustained by the corporation was \$2,451,210.51. The record indicates that Compania Cubana Primadera, S. A. authorized 30,000 shares of 6% preferred stock, of which 26,490 shares with a par value of \$100.00 per share were outstanding. The record further indicates that Compania Cubana Primadera, S.A. authorized 1,500,000 shares of common stock, of which 1,132,000 shares with a par value of \$1.00 per share were outstanding.

On the basis of all the evidence of record, the Commission finds that \$2,451,210.51 is the amount that would have been available for distribution

among the stockholders of Compania Cubana Primadera, S.A. if the company had been liquidated voluntarily.

Although the holders of the preferred shares would be entitled to par value of \$100.00 per share at the time of dissolution, the amount available for distribution among the preferred shareholders was \$2,451,210.51, or \$92.1936 per share. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of preferred stock in Compania Cubana Primadera, S.A. is \$92.1936.

As to the common stock of Compania Cubana Primadera, S.A., the net assets, if any, available for distribution are to be calculated by deducting the liabilities and that portion of the capital investment listed for the outstanding preferred stock and accumulated dividends from the total assets. It is apparent that, after application of available assets to the total par value of outstanding shares of preferred stock, there would be no funds available for distribution among the shares of common stock in the company. The common stock of Compania Cubana Primadera, S.A., therefore, had no value on the date of loss. Accordingly, that portion of the claim based upon common stock is denied.

In the instant claim, the Commission concludes that claimant, as holder of 66 shares of the 6% Preferred Stock of Compania Cubana Primadera, S.A. suffered a loss in the amount of \$6,084.78 within the meaning of Title V of the Act, as a result of the intervention of Compania Cubana Primadera, S.A. by the Government of Cuba on August 7, 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that MARTHA P. BALME 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 Six Thousand Eighty-four Dollars and Seventy-eight Cents (\$6,084.78) with interest at 6% per annum from August 7, 1960 to the date of settlement.

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

JAN 14 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

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.

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].)