

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

IN THE MATTER OF THE CLAIM OF

BURRUS MILLS, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0548

Decision No. CU 4234

Counsel for claimant:

Carrington, Johnson & Stephens
By Dan McElroy, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$9,847,099.78, was presented by BURRUS MILLS, INCORPORATED, based upon the nationalization or other taking of its wholly-owned subsidiaries, Burrus Flour Mills, S.A. and Burrus Feed Mills, S.A., by the Government of 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.

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 the State of Delaware on June 10, 1929, under the name of "Tex-O-Kan Flour Mills Company"; and by certificate of amendment on August 1, 1951, the name was changed to BURRUS MILLS, INCORPORATED. Further, the record discloses that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant stated that on November 2, 1965 there were outstanding 432,568 shares of stock and 200 thereof are registered in the name of the one stockholder classified as an alien. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant herein owned a 100% interest in Burrus Flour Mills, S.A. and Burrus Feed Mills, S.A., hereinafter referred to as Burrus Flour, and Burrus Feed.

Evidence available to the Commission establishes that Burrus Flour and Burrus Feed were nationalized by the Government of Cuba on October 24, 1960, by Resolution 3 pursuant to Law 851. Since the Cuban firms were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The claimant has submitted evidence pertaining to the value of Burrus Flour and Burrus Feed. The data includes appraisal reports, with detailed inventories, as prepared by Coats & Burchard, balance sheets of the Cuban firms prepared by certified public accountants as of June 30, 1960, photographs, sketches, affidavits and appraisals of persons with personal knowledge of the Cuban properties, as well as internal or company financial statements prepared in July, August and September 1960.

Burrus Flour acquired a tract of land comprising approximately 60,862 square meters on December 23, 1947; and, after the exchange of smaller tracts in April 1950, owned a unified tract of land at Regla, Havana, Cuba, comprising approximately 60,834 square meters. Burrus Flour also acquired an area of 35,584 square meters of land at Wajay, Marianao, Cuba, which was utilized as an experimental farm.

The Cuban subsidiaries, Burrus Flour and Burrus Feed, constructed a wheat flour mill, a feed mill, grain elevator, a dock facility with traveling gantry and belt conveyors, warehouses, office and ancillary buildings, with drainage ditches, roads, fencing, railroad sidings and other facilities. The flour mill had a rated daily grinding capacity of 12,000 bushels of wheat which represents a daily productive capacity of 5,184 cwts. of flour and

2,016 cwts. of mill feeds; and the feed mill had a rated daily capacity of 2,000 cwts. of mixed feeds; while the grain elevator had storage capacity for 760,000 bushels.

Appraisal data, as mentioned above, including reports of Coats & Burchard, discloses the following asserted values for land, improvements, machinery and equipment of the Cuban subsidiaries as of October 25, 1960:

	<u>Burrus Flour Mills, S. A.</u>	<u>Burrus Feed Mills, S.A.</u>
Land		
Mill and dock land at Regla, approximately 60,834 square meters, at \$14.60 per square meter	\$ 888,186.33	
Experimental farm, approxi- mately 35,584 square meters, at Wajay, at \$1.00 per square meter	35,584.00	
	<u>\$ 923,770.33</u>	
Improvements, Machinery & Equipment:		
Land Improvements	116,486.34	
Railroad Trackage	37,841.43	
Buildings & Appurtenances	2,803,754.41	
Machinery & Equipment	1,590,040.04	
Automobiles & Trucks	25,539.19	
Other Equipment	789.48	
	<u>\$4,574,450.89</u>	
Fencing		\$ 733.83
Buildings & Appurtenances		16,007.32
Machinery and Equipment		<u>148,424.18</u>
		<u>\$ 165,165.33</u>

Based upon the evidence of record, as discussed above, including a balance sheet of June 30, 1960 and company records, the following asserted values of the other assets are listed, exclusive of land, buildings, equipment and machinery, an item of \$150,754.47 due to Burrus Flour from Burrus Feed being omitted:

	<u>Burrus Flour Mills, S. A.</u>	<u>Burrus Feed Mills, S.A.</u>
Current Assets:		
Cash	\$3,905,605.34	\$ 73,211.20
Customers' notes and accounts receivable (less reserve of \$20,885.00 for possible losses for Burrus Flour Mills, S.A.)	368,651.96	41,984.48

	<u>Burrus Flour Mills, S. A.</u>	<u>Burrus Feed Mills, S.A.</u>
Inventories		
Flour and wheat and other grains	\$ 521,286.68	\$ 1,495.57
Feed, other mill products and feed ingredients	3,959.25	5,119.45
Bags and supplies	20,000.96	2,965.15
Receivables and Claims:		
Due from officers and employees	49,103.52	
Other	85,420.45	18.00
Miscellaneous investments	15,500.00	819.71
Deferred charges - prepaid insurance, deposits, etc.	<u>111,341.73</u>	<u>5,597.34</u>
Total	<u>\$5,080,869.89</u>	<u>\$131,210.90</u>
Current Liabilities:		
Accounts payable	\$ 617,997.74	\$ 6,162.40
Cuban income taxes	354,240.04	
Other taxes	28,339.02	356.09
Salaries and wages	<u>20,868.51</u>	<u>403.76</u>
Total	<u>\$1,021,445.31</u>	<u>\$ 6,922.25</u>

Thus, based upon the entire record the following is a recapitulation of the claim:

	<u>Burrus Flour</u>	<u>Burrus Feed</u>
Land	\$ 923,770.33	\$
Improvements, Buildings, Appurtenances & Equipment	4,574,450.89	165,165.33
Current Assets	<u>5,080,869.89</u>	<u>131,210.90</u>
	10,579,091.11	296,376.23
Liabilities	<u>1,021,445.31</u>	<u>6,922.25</u>
Net Worth	\$ 9,557,645.80	\$289,453.98
Grand Total	<u>\$9,847,099.78</u>	

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the property and equitable to the claimant herein are the values in the balance sheet of June 30, 1960, as adjusted by the appraisal values, company records and other evidence of record discussed hereinabove. The Commission, therefore, finds that the net worth of the Cuban subsidiaries on October 24, 1960, the date of loss, was \$9,847,099.78,

and concludes that claimant sustained a loss within the meaning of Title V of the Act in that amount as a result of the nationalization of the Cuban subsidiaries on October 24, 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 this case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that BURRUS MILLS, INCORPORATED 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 Nine Million Eight Hundred Forty-seven Thousand Ninety-nine Dollars and Seventy-eight Cents (\$9,847,099.78) with interest thereon at 6% per annum from October 24, 1960, to the date of settlement.

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

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

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