

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

IN THE MATTER OF THE CLAIM OF

HELEN M. DRYE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0807

Decision No. CU 4428

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$901.50 was presented by HELEN M. DRYE based upon an interest in common stock issued by Cia. Azucarera Atlantica del Golfo purchased by her in September and November 1959. Claimant has been a national of the United States since birth.

This is the first claim decided involving the Cia. Azucarera Atlantica del Golfo. The Commission notes that numerous claims have been filed with it by other stockholders; thus this decision may serve as a precedent in the determination of those 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 6, 1960 has been the owner of three hundred (300) shares of common stock of Compania Azucarera Atlantica del Golfo, evidenced by Certificate No. NM774.

On August 6, 1960, the Cuban Government published Resolution No. 1 in the Official Gazette which listed Compania Azucarera Atlantica del Golfo as nationalized pursuant to Law 851 of July 6, 1960. Accordingly, the Commission finds that property rights and interests of Cia. Azucarera Atlantica del Golfo were taken on August 6, 1960.

As a corporation organized under the laws of Cuba, Cia. Azucarera Atlantica del Golfo does not qualify as a 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 cent in natural persons who are citizens of the United States. 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.)

Cia. Azucarera Atlantica del Golfo was incorporated in Cuba in 1934 and was engaged in the growing of sugar cane and the manufacture of raw sugar, refined sugar and blackstrap molasses. The properties owned by the enterprise included six sugar mills, Alava, Conchita, Mercedes, Lugareno, Moron and Stewart, 292,389 acres of land, mill settlements with roads, streets and houses, almost 600 miles of railroad lines, 5 diesel and 65 steam locomotives, 2,400 cane cars and 100 other cars, a distillery,

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1,980 head of cattle, and a 50% ownership interest in Cia. Agricola Ceballos. The original properties were purchased in 1934 at a foreclosure sale and additional equipment and machinery were added at various times thereafter.

The Company's authorized capital stock was 5,000,000 shares of common stock having a par value of \$5.00 of which 3,884,000 were outstanding.

Cia. Azucarera Atlantica del Golfo has submitted a claim (CU-1132) on behalf of certain stockholders. In that claim, the Company asserted its losses as follows:

Lands and Cultivations	\$ 48,661,000.00
Railroad System	25,740,000.00
Communications System	200,000.00
Central Alava	4,530,000.00
Central Conchita	4,465,000.00
Central Mercedes	4,865,000.00
Central Lugareno	5,935,000.00
Central Moron	11,880,000.00
Central Stewart	8,896,000.00
Other Properties	6,230,000.00
Unappraised Properties	<u>9,995,317.00</u>
Total	\$131,397,317.00

In support of the values claimed, the Company submitted an appraisal of the lands, buildings, machinery, railroad property and equipment, canals, agricultural equipment and electrical equipment prepared by Luis Parajon who was personally acquainted with claimant's properties and an acknowledged appraisal expert on sugar mills and other properties. Also available to the Commission were reports filed with the Cuban National Institute of Agrarian Reform (INRA) by Atlantica del Golfo and Compania Agricola Ceballos, its 50% owned subsidiary, financial reports for the years 1957, 1958, 1959 and 1960, and correspondence of company officials.

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.

In its Annual Report for the year ended September 30, 1959, the Company included a balance sheet listing its assets and liabilities as follows:

ASSETS

Working assets:

Cash in banks and on hand	\$ 1,638,163.72	
Accounts receivable	88,835.11	
Products on hand or shipped	16,550,984.50	
Advances to cane growers	882,454.05	
Advances to employees	<u>112,088.82</u>	\$ 19,272,526.20

Other working assets:

Livestock	\$ 50,206.31	
Materials and supplies	1,589,405.61	
Expenses prepaid or deferred	809,543.82	
Non-current accounts	<u>340,000.00</u>	<u>2,789,155.74</u>

Total Working Assets \$ 22,061,681.94

Mortgages receivable 50,000.00

Investments:

Wholly-owned subsidiaries	\$ 1,583,850.13	
Other, less reserve \$373,902.76	<u>217,501.00</u>	1,801,351.13

Growing cane, less amortization 15,221.32

Property, plant and equipment:

Plant and equipment	\$20,286,811.63	
Less reserve for depreciation	<u>7,271,375.98</u>	
	13,015,435.65	
Lands and other non-depreciable items	<u>1,158,302.14</u>	14,173,737.79

Other assets & deferred charges:

Escrow accounts	530,147.61	
Miscellaneous	<u>193,160.74</u>	<u>723,308.35</u>

Total Assets \$ 38,825,300.53

LIABILITIES

Current Liabilities:

Bank loans	\$ 6,006,621.01
Accounts payable	605,507.92
Estimated due to cane growers	917,973.96
Accrued expenses	402,332.34
Estimated shipping expenses	1,350,932.29
Provision for Cuban income taxes	<u>1,048,591.26</u>

Total Current Liabilities \$ 10,331,958.78

Liability and liquidation agreement
of former parent company 530,147.61

Liens on properties 116,023.14

Deferred credits 17,784.61

Capital stock and surplus:

Authorized 5,000,000 shares of
\$5.00 par value each
Issued and outstanding 3,884,000 \$19,420,000.00

Earned surplus:

Appropriated	156,284.16	
Unappropriated	<u>8,253,102.23</u>	<u>27,829,386.39</u>

Total Liabilities \$ 38,825,300.53

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, and finds that the values most appropriate for the subject properties are reflected in the September 30, 1959 balance sheet with adjustments based upon the Parajon appraisal and additional evidence available to the Commission concerning the items of cash on hand, livestock and investments.

According to the record, Atlantica had cash on hand in the United States in the amount of \$145,000.00 which reduces the amount of cash lost on August 6, 1960 to \$1,493,163.72. The record establishes also that Atlantica was the owner of 1,980 head of cattle which had been taken by the Cuban Government. Although the balance sheet shows a value of \$50,206.31, the Commission finds the value of such livestock to be \$191,010.60.

The balance sheet further lists Investments in the total amount of \$1,801,351.13, the amount of \$1,583,850.13 being for wholly-owned subsidiaries and \$217,501.00 for other investments, less a reserve of \$373,902.76. In a note accompanying the balance sheet, Atlantica states that one of the wholly-owned subsidiaries has been inactive for years and one of the principal assets of the other represents an investment in an oil drilling venture in Argentina. There is no evidence that Atlantica sustained a loss from these investments as a result of any action of the Cuban Government and the amount of \$1,583,850.13 is omitted from the total of losses sustained. The remaining investments consist of a 50% ownership of the company Cia. Agricola Ceballos and shares of Ferrocarriles Occidentales de Cuba. On the basis of evidence of record, the Commission finds that the value of Cia. Agricola Ceballos on August 6, 1960, the date of its nationalization by the Government of Cuba, was \$2,753,042.00. Accordingly, the value of Atlantica's interest therein is determined to be \$1,376,521.00 and the amount of \$1,124,352.00 is deducted from the value of Land and Cultivations set forth in the appraisal of Luis Parajon which had included a value for the land owned by Cia. Agricola Ceballos but not the buildings and other improvements. The value of Atlantica's stock in Ferrocarriles Occidentales de Cuba, S.A. is held to be \$373,903.76 and not the amount of \$1.00 set forth in the balance sheet.

Therefore on the basis of the entire record, the Commission finds the value of the Cuban assets of Cia. Azucarera Atlantica del Golfo on the date of loss as follows:

Cash on hand or in banks		\$ 1,493,163.72
Accounts Receivable		88,835.11
Products on hand or shipped		16,550,984.50
Advances to growers or employees		994,542.87
Livestock		191,010.60
Prepaid expenses		809,543.82
Non-current accounts		340,000.00
Mortgage receivable		50,000.00
Investments:		
Cia. Agricola Ceballos	\$ 1,376,521.00	
Ferrocarriles Occidentales	<u>373,903.76</u>	1,750,424.76
Miscellaneous deferred charges		193,160.74

Plant and Equipment:		
Railroad System	\$25,740,000.00	
Communications System	200,000.00	
Central Alava	4,530,000.00	
Central Conchita	4,465,000.00	
Central Mercedes	4,865,000.00	
Central Lugareno	5,935,000.00	
Central Moron	11,880,000.00	
Central Stewart	8,896,000.00	
Other Properties	<u>6,230,000.00</u>	\$ 72,741,000.00
Land and Cultivations		<u>47,536,648.00</u>
Total Assets		\$142,739,314.12

Materials and supplies are not listed separately in the assets because such property was included in the appraisal by Parajon.

According to the balance sheet of September 30, 1959, however, the corporate liabilities in Cuba were \$10,465,766.53, omitting the liability under the liquidation agreement since an equal amount in an escrow account was eliminated from the assets. Deducting the corporate liabilities from the total assets leaves a net value of \$132,273,547.59. Thus the total loss sustained by the corporation was \$132,273,547.59 and the loss per share for each of the 3,884,000 shares of common stock held in Cia. Azucarera Atlantica del Golfo was \$34.0560.

Accordingly, the Commission finds that claimant, as holder of three hundred (300) shares of common stock of Cia. Azucarera Atlantica del Golfo suffered a loss as a result of the taking by the Government of Cuba of the corporation's assets in the amount of \$10,216.80 within the meaning of Title V of the Act.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

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 HELEN M. DRYE 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 Ten Thousand Two Hundred Sixteen Dollars and Eighty Cents (\$10,216.80) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

22 JAN 1970

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).)

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