

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

IN THE MATTER OF THE CLAIM OF

PHILIP A. LUKIN
VERA D. LUKIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0854
Claim No. CU-0855

Decision No. CU 4761

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, each in the amount of \$5,000.00, were presented by PHILIP A. LUKIN and VERA D. LUKIN, and are based upon the asserted loss of stock interests in and debts due from a Cuban enterprise. Claimants have been nationals of the United States since birth.

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.

The Commission finds on the basis of evidence of record that claimants each owned 82 shares of stock of Anuncios Cuba Trafico, S.A., (hereafter referred to as Anuncios) a Cuban corporation which had held a concession granted by the Batista Government of Cuba, on November 22, 1957, for the placement of signs indicating the official bus stops in the entire national territory of Cuba.

The record shows that on April 22, 1959, the Government of Cuba cancelled the aforementioned concession, by its Decree 1137. Anuncios was later listed as confiscated by Resolution 2790 of March 8, 1960. The Commission holds that the cancellation of the franchise on April 22, 1959, constituted a constructive taking of the claimants' interests in Anuncios, resulting in a loss within the meaning of Title V of the Act. (See Claim of Garcia & Diaz, Inc., Claim No. CU-0940.)

Since Anuncios was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(i)(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. In this type of situation, it has been held that an American stockholder is entitled to file a claim based upon 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.

Evidence of record in these and several related claims includes financial statements or balance sheets for April 10, 1958, June 30, 1958, July 31, 1958, August 31, 1958, September 30, 1958, October 31, 1958, November 30, 1958 and December 31, 1958. A balance sheet for September 21, 1959, however, does not reflect any assets. The Commission finds that the balance sheet for December 31, 1958, most accurately reflects the condition of Anuncios at the time of loss. It is as follows:

ASSETS:

Contracts, net	\$ 53,820.00	
Received o/acct.	<u>26,235.00</u>	
Balance accounts receivable		\$ 27,585.00
Bank accounts		979.03
Receivable Cienfuegos Concession		444.00
Pre-paid materials & installations		1,678.00
Office Furniture		277.78
Concession Value		1.00
Copyright application		1.00
Corporation set-up		<u>1.00</u>
TOTAL ASSETS		\$ 30,966.81

LIABILITIES:

Loan due stockholders	\$ 10,000.00
Interests due stockholders	250.00
Concession Fee (14.- p.a.) (Sales December - 44 posts)	672.92
Studio Dekora	750.00
Sales Commissions	<u>376.00</u>
TOTAL LIABILITIES	\$ 12,048.92
Surplus	<u>18,917.89</u>
	\$ 30,966.81

At the time of loss there were outstanding 981 shares of Anuncios, 980 at par value of \$5. and one at par value of \$100. The record does not

indicate any distinction as to the conditions of the shares. The Commission finds that as there was \$18,917.89 available for distribution among the shareholders, one share of stock had a value of \$19.2944.

Accordingly, the Commission concludes that PHILIP A. LUKIN and VERA D. LUKIN each suffered a loss of \$1,582.14 in connection with the 82 shares of stock held by each, as a result of the action of the Government of Cuba on April 22, 1959.

Additionally, the record shows and the Commission finds that at the time of loss Anuncios was indebted to each claimant here in the amount of \$1,666.67, and that each claimant thus suffered a further loss in that amount.

Accordingly, the Commission holds that PHILIP A. LUKIN and VERA D. LUKIN each suffered a loss of \$3,248.81 within the meaning of Title V of the Act, as a result of the actions of the Government of Cuba.

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

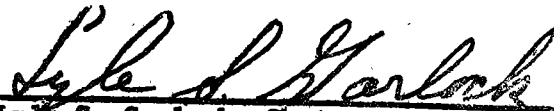
The Commission certifies that PHILIP A. LUKIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Two Hundred Forty-eight Dollars and Eighty-one Cents (\$3,248.81) with interest thereon at 6% per annum from April 22, 1959 to the date of settlement; and

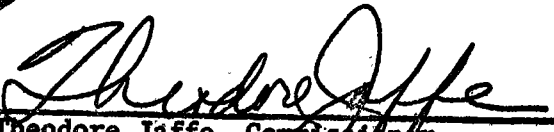
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The Commission certifies that VERA D. LUKIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Two Hundred Forty-eight Dollars and Eighty-one Cents (\$3,248.81) with interest thereon at 6% per annum from April 22, 1959 to the date of settlement.

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

APR 22 1970


Lyle S. Garlock, Chairman


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 claimants establish retention of the securities or 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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