

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

IN THE MATTER OF THE CLAIM OF

BENJAMIN KOVNER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1015

Decision No. CU 5974

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 BENJAMIN KOVNER in the amount of \$162,300.00 based upon the asserted ownership and loss of stock interests in Cuba. Claimant has been a national 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.

Claimant describes his losses as follows:

| | <u>Cost</u> | <u>Fair Market Value</u> |
|--|-----------------|--------------------------|
| 250 shares of common stock of Cuban Independent Trading Corporation | \$ 250.00 | \$100,000.00 |
| 472 shares of preferred stock of Cuban Independent Trading Corporation | 47,300.00 | 47,300.00 |
| 1,656 shares of common stock of Colon Independent Trading Corporation | <u>1,656.00</u> | <u>15,000.00</u> |
| | \$49,206.00 | \$162,300.00 |

Based on the entire record the Commission finds that claimant was the owner of stock interests in Cuban Independent Trading Corporation and Colon Independent Trading Corporation, as further discussed below, and that both corporations were intervened by the Government of Cuba on September 1, 1960.

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.

Cuban Independent Trading Corporation

Claimant has submitted stock certificates evidencing his ownership of 250 shares of common stock of a par value of \$1.00 and 470 (not 472) shares of preferred stock of a par value of \$100.00 of Cuban Independent Trading Corporation.

Claimant has not submitted any evidence of the value of his stock interest in Cuban Independent although this was suggested to him on several occasions. However, the files of the Commission contain a balance sheet for March 31, 1958, the only one of record with the Commission, which is reported as having been audited by a public accountant. This balance sheet reflects the following, the peso being on a par with the dollar:

Assets:

| | | |
|-------------|-----------------|--------------|
| Cash | \$ 5,996.00 | |
| Investments | 606,276.00 | |
| Deficit | <u>9,350.00</u> | \$621,622.00 |

Liabilities:

| | | |
|------------------|--------------|--------------|
| Accounts Payable | \$ 32,702.00 | |
| Reserves | 8,720.00 | |
| Capital Paid Up | 580,200.00 | \$621,622.00 |

There were 4,376 shares of preferred stock and 252,000 shares of common stock outstanding at the time of loss.

The Commission therefore finds that after deduction of \$437,600.00 as the value of the preferred stock, a net value of \$151,320.00 was available for distribution at the time of loss among the 252,000 shares of common stock. Thus the net value per share of common stock was \$.600476.

Accordingly, the Commission finds that claimant sustained a loss in the amount of \$47,000.00 in connection with his preferred stock interest in Cuban Independent and \$150.12 in connection with his common stock interest in that corporation, on September 1, 1960.

Claimant has not submitted evidence of his asserted ownership of an additional two shares of Cuban Independent preferred stock, and this part of the claim is accordingly denied.

Colon Independent Trading Corporation

In our decision entitled Executors of the Estate of Montgomery Clift, Deceased (Claim No. CU-1385 which we incorporate herein by reference), we held that the properties of Colon Independent were taken by the Government of Cuba on September 1, 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 share of common stock of Colon Independent as \$4.0418.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Clift decision; that he has been the owner of 1,656 shares of common stock in Colon Independent since prior to September 1, 1960; and that he thereby suffered a loss in the amount of \$6,693.22 within the meaning of Title V of the Act.


The Commission has decided that in certifications of loss 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.

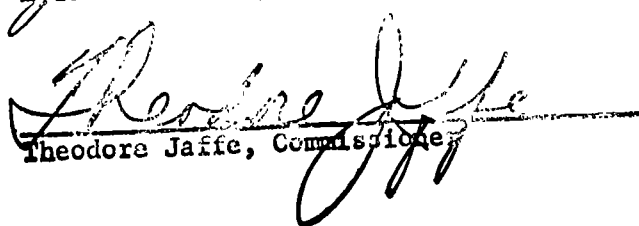
CERTIFICATION OF LOSS

The Commission certifies that BENJAMIN KOVNER 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 Fifty-three Thousand Eight Hundred Forty-three Dollars and Thirty-four Cents (\$53,843.34) with interest at 6% per annum from September 1, 1960 to the date of settlement.

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

NOV 23 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 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. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)