

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

IN THE MATTER OF THE CLAIM OF

CHARLES ELY
EDWARD B. deSILVA
MARIA de S. SHUMAN

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-1182

Decision No. CU -3421

Appeal and objections from a Proposed Decision entered on January 8, 1969.
No oral hearing requested.

Hearing on the record held on September 15, 1971.

FINAL DECISION

Under date of January 8, 1969, the Commission issued its Proposed Decision certifying a loss in favor of CHARLES ELY in the amount of \$297.85 plus interest. The claims of the other two claimants were denied for lack of proof. Subsequently, additional evidence was submitted in support of the claim.

Upon consideration of the new evidence in light of the entire record, the Commission now makes the following findings:

1. The Commission finds that CHARLES ELY owned a 50% stock interest in Cia. Embotelladora Carty, S.A. (Carty), a Cuban corporation.
2. The Commission finds that EDWARD B. deSILVA and MARIA de S. SHUMAN each owned a 25% stock interest in Carty.
3. The Commission finds that EDWARD B. deSILVA and MARIA de S. SHUMAN have been United States nationals since birth.

4. The Commission reaffirms its finding that the net worth of Carty on October 24, 1960, the date of loss, was \$29,784.66. Therefore the values of CHARLES ELY'S, EDWARD B. deSILVA'S and MARIA de S. SHUMAN'S stock interests therein were \$14,892.33, \$7,446.17, and \$7,446.16, respectively.

Accordingly, the Certification of Loss in the Proposed Decision of January 8, 1969 is set aside and the following Certifications of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

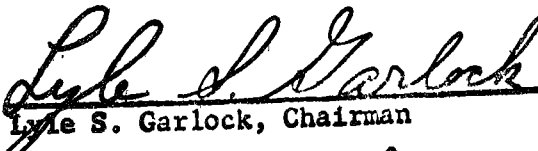
The Commission certifies that CHARLES ELY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Thousand Eight Hundred Ninety-Two Dollars and Thirty-Three Cents (\$14,892.33) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement;

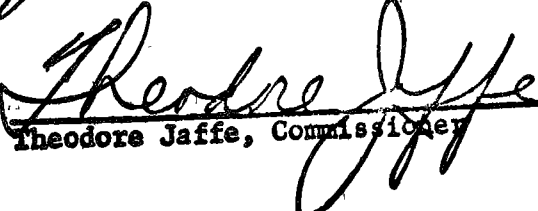
The Commission certifies that EDWARD B. deSILVA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Thousand Four Hundred Forty-Six Dollars and Seventeen Cents (\$7,446.17) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that MARIA de S. SHUMAN 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 Seven Thousand Four Hundred Forty-Six Dollars and Sixteen Cents (\$7,446.16) 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 Final
Decision of the Commission

SEP 15 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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.

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

IN THE MATTER OF THE CLAIM OF

CHARLES ELY

EDWARD B. de SILVA

MARIA de S. SHUMAN

Claim No. CU-1182

Decision No. CU 3421

Under the International Claims Settlement
Act of 1949, as amended

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 \$100,000 was presented initially by CHARLES ELY in the capacity of President of Cia. Embotelladora Carty, S.A., a corporation organized under the laws of Cuba, hereafter referred to as the corporation. Since this corporation does not qualify as a national of the United States within the meaning of Section 502(1)(B) of the Act, it petitioned to represent its United States stockholders. The Commission has authorized the corporation to act as agent for its stockholders who are nationals of the United States.

The three asserted stockholders, CHARLES ELY, EDWARD B. de SILVA and MARIA de S. SHUMAN are substituted as claimants in this matter. CHARLES ELY and EDWARD B. de SILVA have been nationals of the United States since birth. It is said that MARIA de S. SHUMAN has also been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949, as amended [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.

Claim is made for stock interests in the corporation which was engaged in the manufacture, distribution and sale of bottled carbonated soft drinks in Cuba. The record does not include specific evidence of the nationalization or other taking of this corporation by the Government of Cuba. However, evidence available to the Commission reflects that similar corporations were nationalized by the Government on October 24, 1960 pursuant to Law 851. Accordingly, in the absence of evidence to the contrary, the Commission finds that Cia. Embotelladora Carty, S.A., was nationalized by the Government of Cuba on October 24, 1960.

The record includes affidavits of CHARLES ELY, EDWARD B. de SILVA and MARIA de S. SHUMAN, dated May 28, 1963, June 13, 1963 and June 3, 1963 averring that CHARLES ELY acquired a 50% interest in the corporation on November 22, 1954 by the purchase of 50 shares of stock and that EDWARD B. de SILVA and his sister MARIA de S. SHUMAN each acquired, on May 15, 1955 and November 22, 1954, respectively, a 25% interest in the corporation by the purchase of 25 shares of stock.

The shares of stock issued by the corporation were bearer shares, having a par value of 500 pesos each. CHARLES ELY had previously submitted to the Department of State Certificate No. 001 for one share which certificate was later returned to him. In response to suggestions that the stock certificates

be submitted to establish claimants' asserted ownership, CHARLES ELY has submitted Certificate No. 025 for one share of the corporation's stock, and refers to the aforementioned affidavits in support of the asserted 100% ownership in the three claimants. The record does not establish that ownership of the remaining 99% interest in the corporation, represented by bearer shares, has remained in the claimants.

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 interest 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 record includes a financial statement for the corporation, for December, 1959, signed by CHARLES ELY, who has informed the Commission that the figures therein were obtained from his accountant in Cuba. The statement reflects the following:

ASSETS

Cash and Receivables		\$1,574.19
Wooden Cases	\$9,315.06	
Bottles	19,925.63	
Metal Carriers	<u>377.02</u>	29,617.71
Furniture and Fixtures		394.06
Motor Vehicles		9,876.72
Laboratory Equipment		33.89
Franchise Value		<u>57,323.42</u>
		\$98,819.99

LIABILITIES

Capital Stock		\$50,000.00
Notes Payable		7,287.38
Depreciation Reserve		4,424.53
Surplus		<u>37,108.08</u>
		\$98,819.99

The record also includes a copy of the corporation's income tax return to the Government of Cuba for the calendar year 1956; and a copy of a contract of May 1, 1955 between The Seven-Up Company and Cia. Embotelladora Carty, S.A., authorizing the corporation to sell soft drinks in Cuba under the trade name "Seven-Up."

The Commission inquired about the basis for the asset "Franchise Value" in the amount of \$57,323.42 and has been informed by CHARLES ELY that it is computed on the basis of \$1.00 per case sold per year, plus inventory of cases and bottles at the end of the year; that it is not listed as an asset except in case of sale of a business; and that it is not listed in any transfer of assets.

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 for the subject properties as reflected in the December, 1959 balance sheet are the most appropriate basis of valuation. The Commission, however, is not convinced that the item "Franchise Value" should be considered as an asset for purposes of certification of loss.

Thus, the calculation of net worth of the Cuban entity is as follows:

Total assets (less the item "Franchise Value")	\$41,496.57
Less liabilities	<u>11,711.91</u>
Net Worth	\$29,784.66

Accordingly, the loss per share for each of the 100 shares of the corporation on the date of nationalization was \$297.8466.

Accordingly, the Commission finds that claimant CHARLES ELY, as holder of one share of stock of Cia. Embotelladora Carty, S.A., suffered a loss as a result of the taking of the corporation by the Government of Cuba in the amount of \$297.85, within the meaning of Title V of the Act.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Inasmuch as the record does not establish that EDWARD B. de SILVA retained an interest in the corporation, his claim thereon is hereby denied.

Further, inasmuch as MARIA de S. SHUMAN has not established her United States nationality, her claim is denied. It is also noted that she has not established her retention of an interest in the corporation.

The Commission has decided that in certification 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CHARLES ELY 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 Two Hundred Ninety-seven Dollars Eighty-five Cents (\$297.85) with interest 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

JAN 8 1969

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

Theodore Jarfe
Theodore Jarfe, 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 claimants establish 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).)