

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

IN THE MATTER OF THE CLAIM OF

NORMAN H. BOETTCHER
DOROTHY W. BOETTCHER

Claim No. CU-1275

Decision No. CU -6212

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered June 2, 1971. Oral hearing requested.

Argument September 1, 1971 by Rufus King, Esq.

FINAL DECISION

The Commission entered its Proposed Decision in this matter on June 2, 1971 certifying losses to each claimant in the amount of \$27,679.55 based upon their losses of household furnishings, an automobile, and a stock interest in Cia. Gervecera de las Antillas, S.A. The decision denied items of claim based on a stock interest in Industria Machetes, S.A., inasmuch as there was no evidence on which to base a finding of value; and further, claim based on an insurance policy was denied as the record did not establish that any proceeds of the policy had been taken by the Government of Cuba.


At an oral hearing held at the offices of the Commission on September 1, 1971, counsel presented argument with respect to the two items of denial. As to Machetes he asked the Commission to re-examine its records as to what had been done in the asserted claim of a Mr. Saenz on this entity, Mr. Saenz being an affiant in the instant claim. However, the records of the Commission have no claim from Mr. Saenz, whose affidavit shows him to be a Cuban citizen. No evidence is of record as to the value of Machetes on the date of loss and the Commission is constrained to and does affirm the denial of this item.

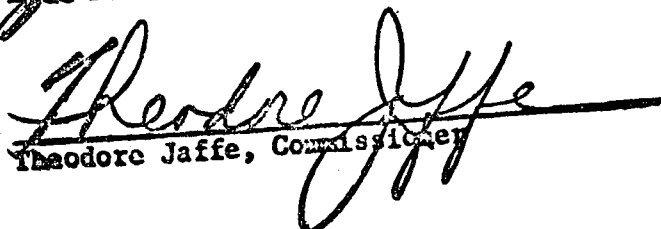
Regarding the insurance policy, counsel submitted evidence that claimant had settled this item with the United States insurer. The Commission affirms its finding that the record does not establish that any proceeds were taken by the Government of Cuba.

Accordingly, the Commission finds no basis to alter its Proposed Decision in this matter, and it is affirmed in all respects.

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

OCT 6 1971


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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Rufus King, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by NORMAN H. BOETTCHER and DOROTHY W. BOETTCHER in the amount of \$71,709.30 based upon the asserted ownership and loss of certain personal property, and stock interests in Cuban corporations. 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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)(1970).)

Claimants describe their losses as follows:

1. Household furnishings and personal effects	\$15,006.30
2. 1959 Ford Thunderbird, new	4,000.00
3. Compania Cervecera de las Antillas, S.A. (2110 shares)	46,200.00
4. Industria Machetes, S.A. (2.5 shares)	2,500.00
5. Insurance policy for \$10,000.00, with paid up value of	<u>4,003.00</u>
	\$71,709.30

Claimants have submitted correspondence and affidavits executed by them and by persons with personal knowledge of their ownership of the household furnishings, personal effects and automobile; as well as an itemized list of the personal property indicating depreciated values at the time of loss; and an "Acta de Ocupacion" concerning the automobile, dated February 9, 1961. Additionally, the record includes a State Department file concerning the aforesaid personal property and other properties included in this claim, as well as a declaration form executed by DOROTHY W. BOETTCHER when leaving Cuba and arriving in the United States in October 1960. On the basis of the entire record, the Commission finds that claimants, NORMAN H. BOETTCHER and DOROTHY W. BOETTCHER, owned equal interests in the aforesaid personalty pursuant to the Community Property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

1. Household Furnishings
2. Automobile

The evidence of record, including correspondence to the American Embassy in Havana from claimants, discloses that the household furnishings and personal effects belonging to claimants left at the family residence at 20215-13th Avenue, Biltmore, Marianao, Havana, were taken on November 15, 1960, by agents of the Cuban Government; and that the automobile belonging to them with extra tires, was confiscated on February 9, 1961 by agents from the Cuban governmental agency known as Ministerio de Recuperacion de Bienes Malversados.

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 Commission has considered the detailed description of the personal property giving depreciated values, and other material concerning the value of such property. Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the evaluation most appropriate to the above personal property, subject of this claim, is that evaluation given by claimants and affiants with personal knowledge of the properties; and that such evaluation is fair and reasonable. Accordingly the Commission finds that on the dates of loss the household furnishings and personal effects had a value of \$15,006.30.

With respect to the automobile, claim was asserted for \$4,000 for a

1959 Ford Thunderbird which claimant in the past stated cost \$4,500 with all extras; and further that he had purchased an extra set of tires.

The Commission finds that this vehicle depreciated at the rate of 15% per year but that an allowance should be made for extra tires. Accordingly, the Commission finds that claimants suffered a loss of \$3,350 in this matter.

3. Cia. Cervecera de las Antillas, S.A.

The record includes stock certificates of Compania Cervecera de las Antillas, S.A., hereafter referred to as Antillas, correspondence with stock transfer agents, annual report of the company and balance sheets, photographs of the plant and equipment and claimants' affidavits and statements, on the basis of which the Commission finds that claimants owned 2,110 shares of stock therein.

The evidence discloses that Antillas was incorporated in Cuba in 1957 with 202,994 shares of common stock. It was a new enterprise with the plant being readied for production.

Since Antillas was organized under the laws of Cuba, it does not qualify as a corporate "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 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 for the value of such ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Antillas was listed as nationalized in Law 890, published in the Cuban Official Gazette on October 13, 1960.

The evidence of record pertaining to the value of Antillas includes a portion of the Annual Report and balance sheet dated July 31, 1960, which reflects the following:

ASSETS

Current Assets:

Petty Cash - Havana Office	\$ 100.00
The First National Bank of Boston	126,641.79
Pujol Bank - Current Account	106,042.83
Pujol Bank - Building Construction Account	319,860.09
Cash in Banks and on Hand	<u>\$ 552,644.71</u>

Accounts Receivable -Officers & Employees	20,732.88
Accounts Receivable - Miscellaneous	12,076.42
Stock Subscriptions Receivable	8,620.00
Advances to Contractors	98,383.66
Other Advances Receivables	1,031.50
	<u>\$ 140,844.46</u>

Inventories - Raw Materials	\$ 14,649.57
Total Current Assets	<u>\$ 708,138.74</u>

Investments:

	\$ 10,000.00
Less Reserve for investments devaluation	\$ 6,275.00
Total Investments	<u>\$ 3,725.00</u>

Fixed Assets:

Land	\$ 84,682.39
Tools	5,302.67
Construction in progress	2,777,216.35
Total Fixed Assets	<u>\$2,867,201.41</u>

Deferred Charges:

Organization Expenses	\$ 611,435.76
Insurance Premiums paid in advance	3,256.72
Other Deferred Charges	4,408.86
Deposits in Utilities & Other	1,048.84
Deposits for Custom Duties	2,725.00
Total Deferred Charges	<u>\$ 622,875.18</u>

Total Assets	<u>\$4,201,940.33</u>
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LIABILITIES AND CAPITAL

Current Liabilities:

Accounts Payable	\$ 279.26
Mortgage Notes Payable(Current)	7,417.55
Accrued Workmen's Vacations	8,462.21
Taxes Withheld	3,613.33
Total Current Liabilities	<u>\$ 19,772.35</u>

Mortgage Notes Payable(Long Term)F.H.A.	<u>\$ 622,287.98</u>
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Capital:

Capital Stock issued and Outstanding 202,994 shares At \$20 Nominal Value	\$4,059,880.00
Less: Discount on Stock	500,000.00
Total Capital	<u>\$3,559,880.00</u>

Total Liabilities and Capital	<u>\$4,201,940.33</u>
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Information obtained by the Commission from another claim based on Antillas stock includes a note to the balance sheet, concerning the organizational expenses, and which states:

(3) All expenses incurred in the promotion and operation of the Company, with the exception of those applicable to the cost of buildings and machinery, are considered as organization expenses, until such time as the firm initiates its production. Later on, in accordance with the regulations on company taxes, the balance accumulated on this account up to that date, will be amortized during a ten-year period.

It is clear from the record that these organization expenses had not been amortized, but they enhanced the value of the corporation and the Cuban Government received the benefit thereof. Accordingly, they are taken into account in arriving at the net worth.

In determining the value of the stock interest of claimants in Antillas the Commission has considered claimants' assertions and the financial data presented. The Commission concludes that the book value is the most appropriate basis of evaluation and finds that the net worth of Antillas on the date of nationalization was as follows:

Assets	\$4,201,940.33
Liabilities	<u>642,060.33</u>
Net Worth	\$3,559,880.00

Accordingly, each of the 202,994 outstanding shares of Antillas stock had a value of \$17.53687 per share; and the claimants' 2,110 shares had a total value of \$37,002.80 at the time of loss.

4. Industria Machetes, S.A.

The evidence of record indicates that Machetes, S.A. was newly organized in Cuba and was assertedly taken by the Government of Cuba in 1962. The record discloses that claimants jointly owned 25 shares of the common stock of this company for which they paid \$2,500.00 in 1960.

No evidence of the value of this company at the time of loss has been submitted although the Commission suggested to claimants that such data be submitted. It cannot be concluded that claimants' original investment remained untouched, nor does the record give any indication of the net

earnings of the company or any data from which a sound conclusion could be drawn as to its value on the asserted date of loss.

In the absence of probative evidence of the value of Industria Machetes, S.A., on the date of loss, the Commission is constrained to find that claimants have not sustained the burden of proof and this portion of the claim is hereby denied.

5. Life Insurance Policy

Claimants assert a loss of \$4,003.00, representing the asserted paid-up value of a \$10,000 life insurance policy on the life of NORMAN H. BOETTCHER with United States Life Insurance Company of New York. The evidence includes correspondence between claimants and the Life Insurance Company. The carrier states in the correspondence that all payments on the policy are payable in Cuba.

The Commission suggested to claimants in correspondence that evidence be submitted to establish that the proceeds of the policy in question were taken by Cuba. However, such evidence has not been submitted by the claimants. The Commission finds that claimants have failed to meet the burden of proof with respect to the portion of the claim based on life insurance policy in that available evidence does not establish that any proceeds of the policy were taken by the Government of Cuba. Accordingly, this portion of the claim is hereby denied. (See Claim of Estrella Vaughn, et al, Claim No. CU-1213.)

Claimants' losses within the scope of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Antillas Stock	October 13, 1960	\$37,002.80
Furnishings	November 15, 1960	15,006.30
Automobile	February 9, 1961	<u>3,350.00</u>
		\$55,359.10

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 as follows:

	<u>FROM</u>	<u>ON</u>
NORMAN H. BOETTCHER:	October 13, 1960	\$18,501.40
	November 15, 1960	7,503.15
	February 9, 1961	<u>1,675.00</u>
		\$27,679.55
DOROTHY W. BOETTCHER:	October 13, 1960	\$18,501.40
	November 15, 1960	7,503.15
	February 9, 1961	<u>1,675.00</u>
		\$27,679.55

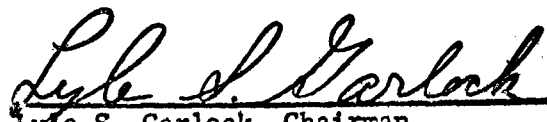
CERTIFICATION OF LOSS

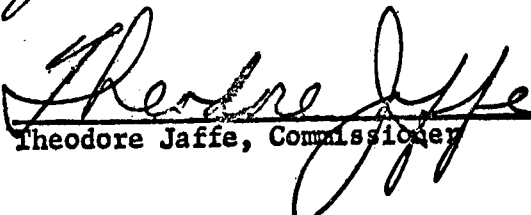
The Commission certifies that NORMAN H. BOETTCHER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Seven Thousand Six Hundred Seventy-Nine Dollars and Fifty-Five Cents (\$27,679.55) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that DOROTHY H. BOETTCHER 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 Twenty-Seven Thousand Six Hundred Seventy-Nine Dollars and Fifty-Five Cents (\$27,679.55) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 2 1971


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. 531.5(e) and (g), as amended(1970).)

CU-1275