

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

IN THE MATTER OF THE CLAIM OF

LIBBY HOLMAN REYNOLDS

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Claim No. CU-1384

Decision No. CU **3496**

Polikoff & Clareman

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 LIBBY HOLMAN REYNOLDS, and is based upon the asserted loss of \$38,895.00 sustained in connection with the ownership of a stock interest in Minimax Super-Mercados, S.A. Claimant has been a national of the United States since birth.

This is the first claim involving Minimax Super-Mercados, S.A. The Commission notes that several other claims have also been filed with it by other stockholders; thus this decision may, where applicable, serve as a precedent in the determination of those other 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 (1964)], 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 record contains stock certificates Nos. 0053, 0589, 0899, 1055 and 1397 issued to the claimant on or prior to July 3, 1958, totalling 29,194 shares of capital stock in Minimax Super-Mercados, S.A. On the basis of all the evidence of record, including the foregoing certificates, the Commission finds that the claimant owned, continuously from the date of loss to the presentation of this claim, 29,194 shares of the capital stock issued by Minimax Super-Mercados, S.A.

Minimax Super-Mercados, S.A. was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The Commission has decided that in such instances stockholders who qualify as United States nationals under the Act may claim the value of their stock in Cuban corporations which have been nationalized or otherwise taken by the Government of Cuba.

On September 1, 1960, Minimax Super-Mercados, S.A. was intervened pursuant to Resolution No. 19103 of the Cuban Ministry of Labor and the Commission so finds.

The Commission concludes that as a result of the intervention by the Government of Cuba of Minimax Super-Mercados, S.A., claimant suffered a loss within the meaning of Title V of the Act.

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". 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.

Claimant submitted a balance sheet dated December 31, 1959. However, a later balance sheet dated March 31, 1960 available to the Commission reflects the following:

A S S E T S

Current Assets

Cash in Banks and on Hand		\$	75,260.27	
Receivable				
Supermercados Ekloh	\$ 72,500.00			
Institutional Customers	33,504.16			
Employees' Advances	10,676.29			
Miscellaneous	<u>2,123.38</u>		118,803.83	
Merchandise				
Stores	\$389,723.55			
Warehouse	<u>115,039.70</u>		504,763.25	
Deposits as Guarantee			<u>146,945.44</u>	\$ 845,772.79

Fixed Assets

Store No. 1		\$	138,545.86	
"    "    2			47,551.84	
"    "    3			84,881.41	
"    "    4			96,441.64	
"    "    5			94,257.41	
"    "    6			127,610.78	
"    "    7			159,194.97	
"    "    8			190,698.45	
"    "    9			130,625.92	
"    "   12			30,805.33	
"    "   13			91,186.78	
"    "   25			29,027.11	
Furniture and Fixtures - Office			46,370.17	
"    "    "    - Warehouse			5,582.78	
Automobiles			<u>15,712.44</u>	
		\$1,288,492.89		
Less: Depreciation Reserve		<u>181,480.45</u>		1,107,012.44

Investments

405,280.00

Other Assets

Trade Marks	\$	10,000.00	
Goodwill		110,000.00	
Leases		<u>100,000.00</u>	220,000.00

Deferred Charges

Unexpired Insurance	\$	6,549.91	
Prepaid Interest		2,546.22	
Organization Expenses (Amortized \$20,826.75)		<u>124,012.86</u>	133,108.99

Total \$2,711,174.22

L I A B I L I T I E S

Current Liabilities

The Royal Bank of Canada - Loans	\$	590,000.00	
Notes Payable		99,834.04	
Accounts Payable - Merchandise		304,503.31	
Other Accounts Payable		29,854.76	
Miscellaneous Taxes Payable		<u>7,918.79</u>	\$1,032,110.90

Reserve

Labor Vacations	\$	26,394.10	
Law #40, 1959		<u>2,337.66</u>	<u>28,731.76</u>

\$1,060,842.66

N E T W O R T H

Capital Authorized

(10 Million Shares at \$1.00 par value) \$10,000,000.00

Capital Issued

Original Investment	\$1,250,000.00		
Transferred from Surplus as Dividends and new Investment	<u>396,491.00</u>	1,646,491.00	

Deficit

Balance, January 1, 1960	\$	44,450.35	
Loss for the Three Months		<u>40,609.79</u>	<u>3,840.56</u>
			<u>1,650,331.56</u>

Total \$2,711,174.22

The record indicates that Minimax Super-Mercados, S.A. authorized 10,000,000 shares of capital stock and had 1,646,491 shares outstanding at the time of loss.

All items shown in the balance sheets are deemed proper in this case because of the nature of the business in question. For example, although in some cases organization expenses are not allowable, here they were incurred in creating a chain store operation which was continued as such by the Cuban Government and it received the benefit thereof. The same reasoning applies to the items shown as "Other Assets". Thus these items should and will be taken into account in arriving at the net worth here.

The calculation of net book worth for the purposes of this decision is as follows:

Assets		\$2,711,174.22
Current Liabilities	\$1,032,110.90	
Reserve	<u>28,731.76</u>	<u>1,060,842.66</u>
Net Worth		\$1,650,331.56

The Commission therefore finds a net book value of \$1,650,331.56 was available for distribution at the time of loss, among the 1,646,491 shares of capital stock issued by Minimax Super-Mercados, S.A., or the net book value ~~per~~ share of capital stock had a value of \$1.0023.

Accordingly, in the instant claim, the Commission finds that claimant suffered a loss in the amount of \$29,261.15 within the meaning of Title V of the Act, as a result of the intervention of Minimax Super-Mercados, S.A. by the Government of Cuba on September 1, 1960.

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 LIBBY HOLMAN REYNOLDS 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-nine Thousand Two Hundred Sixty-one Dollars and Fifteen Cents (\$29,261.15) with interest thereon 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

FEB 5 1969

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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).)