

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

IN THE MATTER OF THE CLAIM OF

H. DUYS & CO., INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU- 1477

Decision No. CU 3967

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 \$5,473,003.75, was presented by H. DUYS & CO., INC., based upon the asserted loss of a stock interest in a Cuban corporation and a debt due from that corporation.

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 providesL

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 502(1)(B) of the Act 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 record shows that claimant was organized under the laws of New York and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has stated that in October, 1960, 33-1/3% of claimant's outstanding preferred stock, 5.7% of its common stock and 1.7% of its Class "A" stock was foreign owned. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant owned a 100% interest in H. Duys & Co. Havana Tobacco, S.A., hereafter called the Cuban subsidiary.

Evidence available to the Commission establishes that H. Duys & Co., Havana Tobacco, S.A., was intervened by the Cuban Government on September 15, 1960 by Resolution 20260. Thereafter, the company was listed as nationalized in Resolution No. 3, pursuant to Law 851. Since the Cuban firm was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of 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.

Claimant has computed its claim for the loss of its Cuban subsidiary on the basis of the assets of the subsidiary as shown by the subsidiary's balance sheet as of October 31, 1960, with adjustments concerning fixed assets at replacement values, tobacco inventory at sales value and other computations.

The evidence of record includes copies of balance sheets and profit and loss statements for the years from 1956 to 1959, inclusive; copies of balance sheets as of June 30, 1960, and statements from officials of claimant. The balance sheet as of October 31, 1960, shows the financial condition of the Cuban subsidiary as follows, the Cuban peso being on a par with the United States dollar:

A S S E T S

Current Assets:

Cash		\$ 75,037.61
Inventory of leaf tobacco		4,118,271.34
Accounts Receivable - Customers		284,152.22

Current Assets

\$ 4,477,461.17

Fixed Assets

Building		\$ 437,167.56
Reserve for Depreciation		45,958.00
		<u>\$ 391,209.56</u>
Warehouse Equipment	\$25,916.82	
(Reserve for		
Depreciation	<u>5,601.39</u>	20,315.43
Furniture & Fixtures	\$31,205.90	
(Reserve for		
Depreciation	<u>10,760.00</u>	20,445.90
Auto Account	\$31,331.50	
(Reserve for		
Depreciation	<u>7,546.92</u>	23,784.58
Land		<u>46,509.53</u>

Net-Fixed Assets

502,265.00

Other Assets

Burlap	7,943.64	
Prepaid Insurance	1,121.11	
Prepaid interest	7,545.84	
Miscellaneous	<u>3,179.76</u>	<u>19,790.35</u>

Total Assets

\$ 4,999,516.52

LIABILITIES

Current Liabilities:

Due on inventory Loans	\$ 500,000.00
Due to Growers	997,631.84
Due to Banks	900,000.00
Accounts Payable	243,498.58
Commissions Payable	79,647.30
Taxes Payable	7,438.82
Dividends Payable	36,456.96
H. Duys & Co. Inc.	<u>273,429.29</u>
Current Liabilities	\$3,038,102.79
Loan - 6% first mortgage - due 6/1/64	225,000.00
Capital Stock & Surplus	
Capital stock - authorized 7500 shrs. at \$100	
- issued 6478 " at \$100	
	\$ 647,800.00
Surplus	<u>1,088,613.73</u>
Total Liabilities & Capital	<u>1,736,413.73</u> <u>\$4,999,516.52</u>

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet as of October 31, 1960. The Commission, therefore, finds that the net worth of the Cuban subsidiary on September 15, 1960, the date of loss, was \$1,736,413.73, and concludes that claimant sustained a loss within the meaning of Title V of the Act in that amount on account of its ownership of the stock of the Cuban subsidiary.

The record shows that the Cuban subsidiary owed a debt to the claimant herein in the amount of \$273,429.29 and the Commission finds that as of September 15, 1960, this sum was due and payable. The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Moreover, the balance sheet reflects dividends payable in the amount of \$36,456.96, which are for the benefit of claimant, sole owner of the Cuban corporation. Accordingly, the Commission concludes that claimant sustained the following losses within the meaning of Title V of the Act:

Stock interest in Cuban subsidiary	\$ 1,736,413.73
Dividends payable	36,456.96
Debt owed by Cuban subsidiary	<u>273,429.29</u>
T o t a l . . . . .	\$ <u>2,046,299.98</u>

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 this case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that H. DUYS & CO., INC., 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 Million Forty-six Thousand Two Hundred Ninety-nine Dollars and Ninety-eight Cents (\$2,046,299.98), with interest thereon at 6% per annum from September 15, 1960, to the date of settlement.

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

**OCT 1 1969**

*Leonard v. E. Sutton*  
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Leonard v. E. Sutton, Chairman

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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Sidney Freidberg, 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.

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).)