

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

IN THE MATTER OF THE CLAIM OF

CARL C. HELMLING

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1493

Decision No. CU 6205

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 CARL C. HELMLING for \$29,200 based upon the asserted ownership and loss of personal property and business 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.

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).)

Claimant describes his loss as follows:

1. 50% interest in Valls y Helmling	\$16,300.00
2. 25% interest in S. Wolfer and Company	10,000.00
3. 100 shares of Cia. Azucarera Vertientes-Camaguey	1,400.00
4. Household furnishings, appliances and clothing	<u>1,500.00</u>
Total	\$29,200.00

On the basis of the record the Commission finds that claimant owned interests in certain items of this claim as further discussed below. Pursuant to the Community Property laws of Cuba, his wife Hilde Helmling, owned a 1/2 interest therein. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) It is not shown that claimant's wife is a United States national. Since she owned 1/2 of the items of property, as stated above, her interests cannot be considered here.

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.

Valls y Helmling

Claimant states that this enterprise was jointly owned by Alfonso Valls and himself and was engaged in selling, distributing, and promoting American made merchandise. The record includes a copy of the agreement between these two partners entered into in Havana, Cuba in May, 1951 which reflects that the company would be capitalized at \$1,000 with each contributing \$500.

Claimant states that when he left, the approximate value of the inventory, accounts receivable, and equipment was \$32,600.00 and that his 50% interest was therefore \$16,300.00. He adds that he has no tax records, but submits an affidavit of the owner of a jewelry firm in Miami, Florida who states that he began selling to Valls y Helmling in 1955 and that sales exceeded \$10,000 per year until 1959-1960 when they could no longer export to Cuba. He also submits an affidavit from the President of Sears, Roebuck & Co. in Cuba who states that he sold this firm various items. Claimant states that he has no additional evidence.

The Commission has considered the entire record but finds the evidence not sufficiently probative to permit findings that would be other than speculative. It is therefore constrained to and does deny this portion of the claim.

S. Wolfer & Co.

Claimant states that he was a 25% partner in this company which distributed Texaco products in Havana, and was purchased by S. Wolfer about 1958 for \$14,000. He adds that in 2 years the business grew in sales to \$250,000 per year and he places a minimum value of the business at \$40,000. He has submitted a balance sheet of the company as of December 31, 1958, and states in a letter of April 2, 1971 that he has no later balance sheet since the following year it was operated by the Castro administration.

Upon consideration of the entire record and in the absence of evidence to the contrary the Commission finds that this company was intervened by

the Government of Cuba within the meaning of Title V of the Act on June 30, 1959, although it may have been formally nationalized later. It further finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet of December 31, 1958 which reflects the following:

<u>Assets</u>		
Petty Cash	\$ 43.33	
Bank deposits	<u>442.03</u>	\$ 485.36
Deposit for rent	560.00	
Reserve for Texaco	713.03	
Studebaker	474.72	
Equipment	<u>983.00</u>	2,730.75
Accounts receivable		7,623.43
Inventory: Accessories	2,000.00	
Gasoline	1,140.73	
Oil	<u>500.00</u>	3,640.73
Texaco franchise		<u>10,000.00</u>
	Total	\$24,480.27

<u>Liabilities</u>		
Accounts payable		\$ 3,500.00
H. Schulz (former owner)	\$4,200.00	
Bank of Boston	2,600.00	
Valls y Helmling	<u>450.00</u>	<u>7,250.00</u>
		\$10,750.00
Capital accounts		
S. Wolfer	2,700.00	
C. Helmling	1,350.00	
A. Valls	<u>1,350.00</u>	5,400.00
Payable to partners		
S. Wolfer	4,084.91	
C. C. Helmling	2,122.68	
A. Valls	<u>2,122.68</u>	<u>8,330.27</u>
	Total	\$24,480.27

The balance sheet indicates that the value of the enterprise was \$5,400 in which claimant's interest was \$1,350.00, and undistributed profits in the amount of \$2,122.68 or a total of \$3,472.68. In addition the Commission has held that debts of enterprises which have been intervened or otherwise taken by the Government of Cuba constitute losses within the meaning 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]). Accordingly, claimant as a 50 percent partner in Valls & Helmling is entitled to recover one-half of the debt of \$450.00 owed by S. Wolfer & Co. to Valls y Helmling, making an aggregate loss of \$3,697.68.

Cia. Azucarera Vertientes-Camaguey

Claimant asserts a loss of 100 shares of this company. He has submitted a certificate for 50 shares made out to Alfonso Valls and which bears an undated endorsement signature which claimant says was by Alfonso Valls to him. He has also submitted a broker's statement to Alfonso Valls in care of claimant for the period ending December 31, 1953 which reflects the purchase of 150 shares of stock in this company. In this regard claimant states that he purchased all of his stock while in Cuba in the name of Alfonso Valls who is a Cuban citizen. He says there was a Cuban tax reason for this procedure but that he cannot recall the reason after the lapse of years, and adds that there was another certificate for either 100 or 75 shares which is lost and not available.

Based on all the evidence of record the Commission finds that claimant has not established by sufficiently probative evidence that he owned stock of this company on the date of loss which was August 6, 1960.

Household Furnishings, etc.

In support of this portion of the claim claimant has submitted an affidavit from one who states that he visited the home of claimant and his wife and had admired the objects and furniture in their home. No other evidence has been submitted to support this portion of the claim although it was suggested to claimant that he submit an itemized list of his personal losses with evidence of ownership, value and the basis for determination of value. This has not been submitted. Any determination of value by the Commission could only be speculative. In view of the foregoing the Commission is constrained to and does deny this portion of the claim.

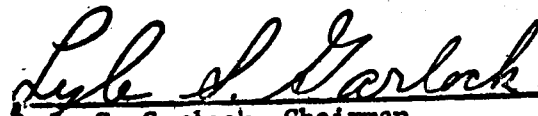
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

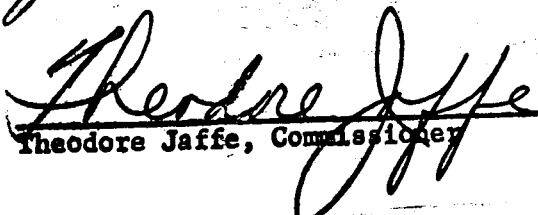
CERTIFICATION OF LOSS

The Commission certifies that CARL C. HELMLING 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 One Thousand Eight Hundred Forty-Eight Dollars and Eighty-Four Cents (\$1,848.84) with interest thereon at 6% per annum from June 30, 1959 to the date of settlement.

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

MAY 26 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).)