

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

IN THE MATTER OF THE CLAIM OF

LAMBORN & COMPANY, INC.

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

Claim No. CU-2883

Decision No. CU 5009

Counsel for claimant:

Manning, Nakasian & Carey  
By Andrew M. Calamari, Esq.

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 \$521,000.00, was presented by LAMBORN & COMPANY, INC., based upon the asserted loss of assets of its predecessor in interest in Cuba.

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 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 its outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that as of November 13, 1967, over 99% of claimant's outstanding capital stock was owned by nationals of the United States at that time. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record also shows that Lamborn, Craig and Company, a general partnership organized in the State of New York, carried on a sugar brokerage business in New York City, and prior to December 30, 1960 had a branch office in Havana, Cuba. The record establishes that on December 30, 1960 Lamborn, Craig and Company consisted of seven partners, all of whom except Francisco Pons y Barraque were nationals of the United States at all times pertinent to this claim.

Based on the evidence of record including a copy of Resolution No. 25187 issued by the Ministry of Labor of Cuba under date of December 30, 1960, and a copy of an Act of Intervention issued on January 5, 1961 by the National Institute of Agrarian Reform concerning take-over of Lamborn properties, the Commission finds that the assets of Lamborn, Craig and Company in Cuba were intervened by the Government of Cuba on December 30, 1960 pursuant to Law 647 of November 24, 1959 and that the partnership suffered a loss within the meaning of Title V of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that on January 9, 1961 Lamborn, Craig and Company assigned all its right, title and interest in this claim to claimant corporation for one dollar and other good and valuable consideration. By affidavit dated February 26, 1968, five of the partners of Lamborn, Craig and Company, which name in the interim had been changed to The Lamborn Company, stated the assignment was made to claimant for purposes of suit and collection, and that claimant undertook under the assignment to repay to The Lamborn Company the net proceeds of the claim assigned when collected.

In view of the above and the evidence of record the Commission finds that claimant corporation succeeded to the claim resulting from the intervention of Lamborn, Craig and Company by the Government of Cuba. In this regard, the Commission also finds that the provision of Section 507(b) of the Act, which limits an assignee of a claim to the amount of the actual consideration paid by the assignee, is not applicable in this case.

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 record includes copies of the balance sheets for Lamborn, Craig and Company, Havana Branch, as of December 31, for the years 1956 through 1960, inclusive. Claimant has also submitted the calculation of its certified public accountant to establish the value of the Havana branch of Lamborn, Craig and Company. The accountant firm computed the value as follows:

|  | <u>New York<br/>Office</u> | <u>Havana<br/>Branch</u> |
|--|----------------------------|--------------------------|
| A. Net income before deductions<br>of partners' salaries and<br>interest on partners' capital<br>accounts: |                            |                          |
| Year ended December 31,:   |                            |                          |
| 1956   | \$ 50,103                  | \$ 15,828                |
| 1957   | 242,431                    | 105,759                  |
| 1958   | 18,066                     | 54,295                   |
| 1959   | 100,614                    | 7,329                    |
| 1960   | <u>108,165</u>             | <u>7,838</u>             |
| Total  | <u>\$ 519,379</u>          | <u>\$191,049</u>         |
| Average income - Havana Branch   |                            | <u>\$ 38,210</u>         |
| B. Partners' capital accounts at<br>December 31, (*):  |                            |                          |
| 1956   | \$ 249,500                 |                          |
| 1957   | 250,000                    |                          |
| 1958   | 250,000                    |                          |
| 1959   | 250,000                    |                          |
| 1960   | <u>201,250</u>             |                          |
|  | <u>\$1,200,750</u>         |                          |
| Average partners' capital account  | <u>\$ 240,150</u>          |                          |
| C. Valuation of Havana Branch of Lamborn,<br>Craig & Co. on the following assumptions:                     |                            |                          |
| 1. Capitalize on the basis of a 6%<br>return (or 16-2/3 times earnings)                                    |                            |                          |
| 2. Approximately one-half of partners'<br>capital was for the Havana Branch:                               |                            |                          |
| Average earnings for five years<br>1956 and 1960   |                            | <u>\$ 38,210</u>         |
| Capitalized at 6% (16-2/3 times<br>earnings)   |                            | \$636,833                |
| Partners' capital for Havana Branch  |                            | <u>120,075</u>           |
| Valuation in excess of partners' capital   |                            | <u>\$516,758</u>         |

(\* ) Excludes balances in partners' drawing accounts.

The method of valuation adopted was based on the use of the price-earnings ratio. The accountant firm pointed out that during the period 1956 to 1960, Standard and Poor's indicated that the price-earnings ratio for 425 industries ranged from 11.89 to 19.99. Since claimant considered a 6% return on capital a fair basis, the accountant firm adopted its equivalent of 16-2/3 times earnings. They also used claimant's estimate that about half the partners' capital was needed for the Havana Branch.

However, upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings for the five year period ending December 30, 1960, at 10% to arrive at the going concern value of the Havana Branch.

The record shows that the net earnings of the Havana Branch for this five year period before deductions of partners' salaries and interest on partners' capital accounts were as follows:

|                |                  |
|----------------|------------------|
| 1956           | \$ 15,828        |
| 1957           | 105,759          |
| 1958           | 54,295           |
| 1959           | 7,329            |
| 1960           | <u>7,838</u>     |
|                | <u>\$191,049</u> |
| Average income | \$ 38,209.80     |

The Commission therefore finds that the value of the Havana Branch on December 30, 1960, the date of loss, was \$382,098.00. However, as stated above, only six of the seven partners of The Lamborn Company on the date of loss were United States nationals. Therefore only the interests of the partners who were United States nationals were within the purview of Title V of the Act. In view of this, the Commission holds that so much of this claim that is based on the interest of the partner, Francisco Pons y Barraque, a nonnational of the United States, must be and hereby is denied.

The record shows that on December 30, 1960, Francisco Pons y Barraque had an 11.9% interest in the allocation of the net income of the partnership. The Commission therefore concludes that the amount of loss suffered by the partnership within the purview of Title V of the Act was \$382,098.00 less 11.9% or \$336,628.34; and that claimant succeeded to and suffered a loss in this amount within the meaning of Title V of the Act.

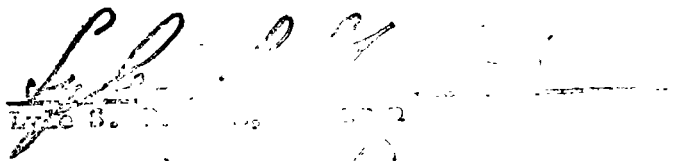
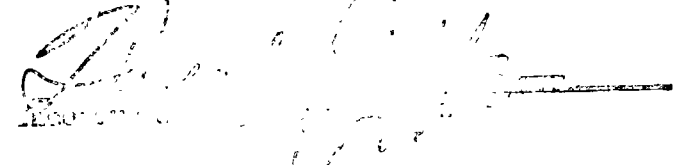
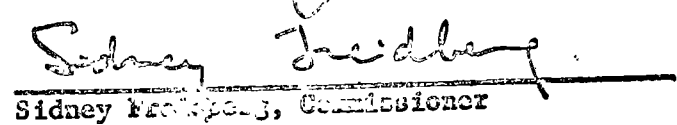
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation,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

CERTIFICATION OF LOSS

The Commission certifies that LAMBORN & COMPANY, INC., succeeded to and 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 Three Hundred Thirty-Six Thousand Six Hundred Twenty-Eight Dollars and Thirty-Four Cents (\$336,628.34) with interest at 6% per annum from December 30, 1960 to the date of settlement.

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

**JUN 17 1970**

  
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Sidney Friedman, 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).)