

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

IN THE MATTER OF THE CLAIM OF

HARRY ROBBIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 4966

Decision No. CU 4008

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$40,801.00 was presented by HARRY ROBBIN, based upon the asserted loss of a stock interest in Fabrica de Medias Corona, S.A., of Cuba, hereafter referred to as Fabrica. Claimant has been a national of the United States since his naturalization on May 31, 1958.

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 Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) It considers this to be such a claim.

On October 13, 1960 the Government of Cuba published its Law 890 which listed as nationalized Fabrica de Medias Corona, S.A. Accordingly, the Commission finds that said enterprise was effectively nationalized by the Government of Cuba on October 13, 1960, within the scope of Title V of the Act.

Since Fabrica de Medias Corona, S.A. was organized under the laws of Cuba, it does not qualify as a national of the United States within the meaning of Section 502(1)(B) of the Act, quoted above. It has been previously held that an American stockholder, owning an interest in such a

corporation, may file a claim based upon his stock, which represents an ownership interest in the nationalized enterprise within the meaning of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant has presented a copy of a cancelled check drawn on an Oklahoma Bank for \$50,000.00 made out to one Herman Heisler in 1956. He asserts that this was his original investment in Fabrica and that he thereby purchased a one-eighth interest in said company. The record also indicates that \$9,199.00 of his investment was returned to him in the form of a subsequent distribution and that he was allowed a federal income tax deduction of \$40,801.00 in 1960. The Commission concludes that claimant had actually invested \$50,000.00 in Fabrica and that his proportionate share of interest in the company remained on the basis of his original purchase price.

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 submitted a copy of a letter of December 6, 1965 from The Royal Bank of Canada to Herman Heisler setting out the last available information the Bank had concerning the assets and liabilities in Cuba of Fabrica and which names Herman Heisler and Salomon Heisler as represented in the paid-up capital. The figures, for December 31, 1959 reflect the following, the Cuban peso being on a par with the United States dollar:

A S S E T S

| | |
|--|----------------------|
| Inventory | \$ 459,992.00 |
| Accounts Receivable | 204,582.00 |
| Bills Receivable, Discounted | 29,287.00 |
| Bills & Accounts Receivable | 11,000.00 |
| Cash | 9,702.00 |
| Other Current Assets | 5,510.00 |
| Credit Balances with customers re Mdse. adjustments | 15,343.00 |
| Furniture and Fixtures | 4,170.00 |
| Deferred Charges | 19,409.00 |
| Investments | 1,750.00 |
| Machinery and Equipment | 137,514.00 |
| Land and Buildings | 60,241.00 |
| | <u>\$ 958,500.00</u> |

L I A B I L I T I E S

| | |
|--|-------------------|
| Due The Royal Bank of Canada, Loans | 160,917.00 |
| O.D. | 7,446.00 |
| Trade Paper Discounted | 29,287.00 |
| Bills Payable | 81,863.00 |
| Accounts Payable | 16,128.00 |
| Glamour Textile, S.A. | 60,785.00 |
| Accrued Wages, Etc. | 20,240.00 |
| Officers' Accounts: Herman Heisler | 63,357.00 |
| Others | 38,347.00 |
| Income Taxes | 475.00 |
| Reserve for Depreciation | 18,574.00 |
| Apparent Surplus | 61,081.00 |
| Capital Paid Up | 400,000.00 |
| | <u>958,500.00</u> |

The Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the latest available figures as supplied by the Bank, for December 31, 1959. Such figures show assets in the amount of \$958,500.00 and liabilities in the amount of \$497,419.00, leaving a net worth of \$461,081.00.

Inasmuch as claimant's original \$50,000.00 investment represented a one-eighth interest in the company, his proportionate interest in the net worth is \$57,635.13.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$57,635.13 on October 13, 1960, 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, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that HARRY ROBBIN 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 Fifty-seven Thousand Six Hundred Thirty-five Dollars and Thirteen Cents (\$57,635.13) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

OCT 8 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)