

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

IN THE MATTER OF THE CLAIM OF

HELEN A. CLAFLIN
WILLIAM H. CLAFLIN, III
MARY C. RENTSCHLER
ANNE C. ALLEN
JOHN W. WEEKS

Claim No. CU-1393
Claim No. CU-1394
Claim No. CU-1395
Claim No. CU-1396
Claim No. CU-1397
Decision No. CU-3836

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

H. Brian Holland, Esq.

FINAL DECISION

Under date of September 3, 1969, the Commission issued its Proposed Decision certifying a loss in favor of WILLIAM H. CLAFLIN, JR., (among others) that claimant's name of record, in the amount of \$623,674.31, plus interest.

By letter, dated September 16, 1969, counsel for claimant advised the Commission that said claimant's name should be shown as WILLIAM H. CLAFLIN, III, instead of WILLIAM H. CLAFLIN, JR. Moreover, it appears from counsel's communication that there are no objections to the Commission's Proposed Decision. Accordingly, it is

ORDERED that the Proposed Decision be amended throughout to reflect claimant's name as WILLIAM H. CLAFLIN, III, and that the certification of loss, to WILLIAM H. CLAFLIN, III for \$623,674.31, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that WILLIAM H. CLAFLIN, III, 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 Six Hundred Twenty-three Thousand Six Hundred Seventy-four Dollars and Thirty-one Cents (\$623,674.31) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

OCT 8 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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Counsel for claimants:

H. Brian Holland, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$11,647,342.72, were presented by HELEN A. CLAFLIN, WILLIAM H. CLAFLIN, JR., MARY C. RENTSCHLER, ANNE C. ALLEN and JOHN W. WEEKS, based upon stock interests in Compania Azucarera Soledad, S.A. Claimants have been nationals 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.

Stock Ownership

On the basis of evidence of record, the Commission finds that the claimants are and since prior to August 6, 1960, have been the owners of shares of common stock of Compania Azucarera Soledad, S.A., as follows:

<u>Shareholder</u>	<u>No. of Shares</u>
HELEN A. CLAFLIN	12,057-1/2
WILLIAM H. CLAFLIN, JR.	1,001-1/2
MARY C. RENTSCHLER	4,700-1/2
ANNE C. ALLEN	1,001-1/2
JOHN W. WEEKS	<u>5</u>
Total shares	18,766

The record discloses that Compania Azucarera Soledad, S.A. was incorporated in Cuba in 1920. It was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. This corporation, organized under the laws of Cuba, does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimants are entitled to file these claims, based upon their ownership therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Corporate Assets And Claimed Loss

The subject company, a family-owned corporation, was engaged in sugar operations, cattle raising and dairy farming in the Province of Las Villas, Cuba. Its lands were conveniently located near the deep water port of Cienfuegos, and were traversed by two rivers, one of which was navigable,

CU-1393, CU-1394, CU-1395,
CU-1396 and CU-1397

furnishing water transportation to Cienfuegos. The Company owned and operated a sugar mill with all of the necessary works, facilities and extensive cane plantations, with a railway leading from the plantations to the sugar mill, and from the mill to the loading dock on the river.

The Company also had extensive pasture lands on which it had beef cattle, a dairy herd and work animals. It appears that as of January 1960, the Company owned 27,170.98 acres (819.39 caballerias), leased 2,404 acres from others, and ground the cane from 11,234 acres belonging to colonos, or contract farmers. In addition, it appears that the Company owned 31 miles of narrow-gauge railroad with steam locomotives, steel-side wooden-floor cane cars, and wooden cars, as well as freight cars, gondola cars and motor cars.

The Company's losses are asserted as follows:

1) Cash	\$	177,918.08
2) Sugar in stock		1,161,600.00
3) Sugar sold and not liquidated		74,075.87
4) Merchandise in stock		13,629.26
5) Molasses in stock		53,925.72
6) Investments		32,799.00
7) Livestock		533,421.00
8) Agricultural Machinery, Equipment & Spare Parts		88,923.16
9) Materials and Supplies		209,347.42
10) Batey Buildings		528,544.50
11) Sugar Factory Buildings		528,743.00
12) Mill Machinery, Repair Shops & other structures & installations		1,973,308.50
13) Equipment at Belmont Pier		131,500.00
14) Building & Facilities at Rio Caunao Pier		14,044.00
15) Rolling Stock		531,300.00
16) Railroad Tracks & Bridges		750,000.00
17) Land, Cane, Pastures, Woods, Buildings and Farming, Dairy and Cattle Ranch Facilities and Equipment		5,179,263.21
18) Legal Expenses		<u>25,000.00</u>
		12,007,342.72
Less Liabilities		<u>360,000.00</u>
Total Loss	\$	11,647,342.72

CU-1393, CU-1394, CU-1395
CU-1396 and CU-1397

An examination of the record indicates that claimants apparently failed to include accounts receivable in an indicated amount of \$64,000.00 due at the time INRA, an agency of the Cuban Government, took possession of a Company store operated by claimant in January 1960.

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.

In support of the statement of loss the claimants have submitted their Joint Affidavit dated January 4, 1961; copy of document No. 123 of May 17, 1920, registered in the Property Registry of Cienfuegos on July 21, 1920, by which the Soledad Sugar Company conveyed to Compania Azucarera Soledad, S.A. all of its properties and assets in Cuba; copy of map and survey by Joaquin Gomez Roman, dated September 14, 1959 showing properties owned by Compania Azucarera Soledad, S.A.; inventory of agricultural machinery, equipment and spare parts seized by the Agrarian Authorities on August 6, 1960; affidavit of Juan Martinez, Controller of the Company, certifying that the inventory of all agricultural machinery, equipment and spare parts was prepared under his supervision and stating that the Company could not have replaced these items with others of the same age and condition without paying more than the values

set forth, and that the inventory is fair and reasonable; copy of inventory of merchandise in Company store prepared by representative of INRA dated January 30, 1960; affidavit of Juan Martinez, Controller of the Company, certifying that he participated in the preparation of the inventory, that it is correct and that the value of the stock was computed at cost.

There is also of record the affidavit of Ildefonso DuQuesne, Manager of the Company, setting forth inventory of all livestock that was taken over by the Agrarian Authorities on August 8, 1960, and certifying that the value of the livestock was based upon the average purchase cost and in some instances upon weight, condition and prevailing market price at the time of loss.

Additionally, the record includes an inventory by INRA of certain quick assets taken over by the Government of Cuba, and their values, including cash, sugar, molasses and securities; affidavit of Juan Martinez, Controller of the Company, certifying that the total liabilities of the Company as of August 6, 1960, including amounts due to the colonos and to suppliers, was \$360,000.00; affidavit of JOHN W. WEEKS, showing that the sold sugar was valued at the actual contract price and unsold sugar at published and/or quoted figures available on August 5, 1960.

Claimants have also submitted an affidavit of Luis Parajon, a qualified appraiser, explaining the methods of appraisal employed in making the valuation of Company properties and his report of the value of Company properties.

Related State Department files and a letter from Ildefonso DuQuesne to the American Embassy, dated February 11, 1960, indicate that on January 28, 1960, when the Cuban Government seized the Company store, there were accounts receivable totalling \$64,000.00.

In summary, the basis for the Company's figures for cash, merchandise in the Company store and securities of Cuban enterprises is based upon inventories and valuations placed thereon by INRA. The basis for the valuation placed upon sugar and molasses is the contract price with respect to that which was sold. The valuation of that which was not sold is based upon quoted figures available on August 5, 1960. Agricultural machinery,

equipment and spare parts were valued at the depreciated replacement cost. Livestock was valued at the average purchase cost and in some instances upon weight, condition and prevailing market price at the time of loss.

The valuation of items (10) through (17) of the Company's asserted losses referred to above are based upon an appraisal prepared by the firm of Parajon e Hijo, well qualified professional appraisers. The values of the bately buildings, sugar factory buildings, mill machinery, repair shops, other structures, installations, equipment at the Belmont pier, buildings and facilities at Rio Caunao pier, were arrived at by the Parajon firm by calculating the depreciated replacement costs. Rolling stock was valued based upon the utility and estimated life of the locomotives and railroad cars. Railway tracks and bridges were valued at depreciated replacement cost. The values for the land, cane stools and pasture grass was based upon the sugar cane yield, actual prices paid for different types of land (other than sugar bearing) and the types of grasses of comparable value in recent years.

Commission Finding As To Gross Corporate Value

On the basis of all the evidence of record, the Commission finds the value of the assets of Compania Azucarera Soledad, S.A. on the date of loss to be as follows:

1) Cash	\$ 177,918.08
2) Accounts Receivable	64,000.00
3) Sugar in stock	1,161,600.00
4) Sugar sold and not liquidated	74,075.87
5) Merchandise in stock	13,629.26
6) Molasses in stock	53,925.72
7) Investments	32,799.00
8) Livestock	533,421.00
9) Agricultural Machinery, Equipment & Spare Parts	88,923.16
10) Materials and Supplies	209,347.42
11) Bately Buildings	528,544.50
12) Sugar Factory Buildings	528,743.00
13) Mill Machinery, Repair Shops & other structures & installations	1,973,308.50
14) Equipment at Belmont Pier	131,500.00
15) Building & Facilities at Rio Caunao Pier	14,044.00
16) Rolling Stock	531,300.00
17) Railroad Tracks & Bridges	750,000.00
18) Land, Cane, Pastures, Woods, Buildings and Farming, Dairy and Cattle Ranch Facilities and Equipment	5,179,263.21
Total Assets	\$12,046,342.72

Other Assets

The item "Investments" includes:

100 shares of Compania de Seguros y Finanzas "Cienfuegos" with a registered value of \$100.00 each	\$ 10,000.00
208 shares of Ferrocarriles Occidental de Cuba, S.A. with a registered value of \$100.00 each	20,800.00
199 shares of Compania de Almacenes y Depositos Solidad, S.A. with a registered value of \$10.00 each	<u>1,999.00</u>
Total	\$ 32,799.00

No outside evidence or information has been supplied by claimants as to the value of these shares nor is there any available other than the claimant's book value of \$32,799.00 at the time the Cuban Government confiscated these securities. Past experience has shown that that Government consistently valued inventoried items at far below cost and current market value. These claimants, in the absence of other evidence, assert the aggregate value of the listed securities as \$32,799.00. In the absence of evidence to the contrary, the Commission finds \$32,799.00 to be the value of these investments.

Computation of Loss

The Commission has consistently held that with respect to a claim based on an entity which is not a United States national, the asset loss will be reduced by liabilities. The value of the claimant's assets, as indicated on page 6 supra, was \$12,046,342.72. On the basis of the evidence of record, the Commission finds that the Company's liabilities, including both current liabilities and other debts at the time of loss, were \$360,000.00, resulting in a net value of the corporate assets of \$11,686,342.72. In this connection it should be noted that the item of "Legal Expenses \$25,000.00" has been omitted from the Gross Corporate Value, and is hereby denied, because such an expenditure is not within the purview of the statute. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469, and Claim of Mathieson Pan-American Chemical Corporation, Claim No. CU-2470.)

Prior to 1960 Cia. Azucarera Soledad, S.A. had issued 513 shares of preferred stock and 26,820 shares of common stock. In 1960, however, and prior to the date of loss, cash and securities owned by the Company and held in the United States were used to purchase and retire all the preferred stock and 8,054 shares of the common stock. Accordingly, on the date of loss there were outstanding, as above noted, 18,766 shares of common stock.

On the basis of all the evidence of record, the Commission finds that \$11,686,342.72 is the amount that would have been available for distribution among the stockholders of Compania Azucarera Soledad, S.A. if the Company had been liquidated voluntarily and concludes that the dollar loss sustained in connection with ownership of each share of stock in Compania Azucarera Soledad, S.A. is \$622.7402.

In the instant claim, the Commission concludes that the claimants, as stockholders, suffered losses within the meaning of Title V of the Act, as a result of the confiscation of Compania Azucarera Soledad, S.A. by the Government of Cuba on August 6, 1960, as set out below:

<u>Claimant</u>	<u>No. of Shares</u>	<u>Amount of Loss</u>
HELEN A. CLAFLIN	12,057-1/2	\$ 7,508,689.96
WILLIAM H. CLAFLIN, JR.	1,001-1/2	623,674.31
MARY C. RENTSCHLER	4,700-1/2	2,927,190.31
ANNE C. ALLEN	1,001-1/2	623,674.31
JOHN W. WEEKS	5	3,113.70

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.

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

CERTIFICATIONS OF LOSS

The Commission certifies that HELEN A. CIAFLIN 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 Seven Million Five Hundred Eight Thousand Six Hundred Eighty-nine Dollars and Ninety-six Cents (\$7,508,689.96) with interest at 6% per annum from August 6, 1960 to the date of settlement;

The Commission certifies that WILLIAM H. CIAFLIN, ^{III}JR. 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 Six Hundred Twenty-three Thousand Six Hundred Seventy-four Dollars and Thirty-one Cents (\$623,674.31) with interest at 6% per annum from August 6, 1960 to the date of settlement;

The Commission certifies that MARY C. RENTSCHLER 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 Nine Hundred Twenty-seven Thousand One Hundred Ninety Dollars and Thirty-one Cents (\$2,927,190.31) with interest at 6% per annum from August 6, 1960 to the date of settlement;

The Commission certifies that ANNE C. ALLEN 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 Six Hundred Twenty-three Thousand Six Hundred Seventy-four Dollars and Thirty-one Cents (\$623,674.31) with interest at 6% per annum from August 6, 1960 to the date of settlement; and

CU-1393, CU-1394, CU-1395
CU-1396 and CU-1397

The Commission certifies that JOHN W. WEEKS 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 Thousand One Hundred Thirteen Dollars and Seventy Cents (\$3,113.70) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

SEP 3 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 claimants establish 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).)