

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

IN THE MATTER OF THE CLAIM OF

ANNA LITTNER
MARY WISHNIA
SAM WISHNIA

Claim No. CU-3655
Claim No. CU-8457
Claim No. CU-8458

Decision No. CU-5759

Under the International Claims Settlement
Act of 1949, as amended

Counsel for ANNA LITTNER
Counsel for MARY WISHNIA and SAM WISHNIA

Emanuel J. Greenwald, Esq.
Benjamin Isaacs, Esq.

Appeal and objections from a Proposed Decision entered on September 9, 1970. Oral hearing was scheduled for January 11, 1971 at 10:00 a.m. at the offices of the Commission, 1111 - 20th Street, Northwest, Washington, D. C. with due notice thereof given to the claimants. No request for a continuance was made and the claimants failed to appear in person or by attorney at the scheduled time.


FINAL DECISION

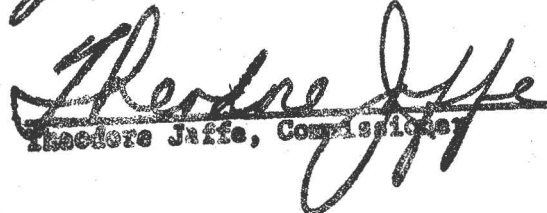
Full consideration having been given to the objections of the claimants, and the entire record having been reviewed, and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision be and the same is hereby affirmed as the Final Decision of the Commission in this claim.

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

FEB 3 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$350,000 are based upon loss of interests in the contents of a safe deposit box in Cuba. Claimants ANNA LITTNER, (her predecessor in interest Theodor Littner), MARY WISHNIA, (her predecessor in interest Michael Wishnia), and SAM WISHNIA were and have been nationals of the United States at all times pertinent to these claims.

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)(1969).)

The claims are based on interests valued at \$250,000 for securities and \$100,000 for diamonds and jewelry said to have been removed from Deposit Box No. 710 in the Havana Branch of the First National City Bank of New York. The securities are described by claimants as:

- (1) 1,500 shares of OESTREICHES STEYRERMUHL PAPER MANUFACTURING
- (2) 1,000 shares of FEREINIGTE FRAUEREIN BRUDER REININGHAUS
(both the above said to have been quoted on the Vienna Stock Exchange)
- (3) 86,265 of various Hungarian interest coupons
- (4) 20,000 French francs of Hungarian Gold Bonds
(said to have been quoted on the Paris Stock Exchange)

In addition to the above, claimant ANNA LITTNER asserted the safety deposit box contained:

- (5) Rumanian 4-1/2% Government Bonds of 1931, purchased by Theodor Littner in 1937 having an asserted 1943 value of \$10,121
- (6) Miscellaneous securities and personal property.

The record includes copy of a letter of March 2, 1961 from the National Bank of Cuba, Agency 2-1, addressed to Teodor Littner asking him to present his rental contract and the two keys to Safe Deposit Box 710 which he had rented from that Bank.

By an Administrative Instruction of February 15, 1961, issued by the President of the National Bank of Cuba (pursuant to his Order No. 26 of January 25, 1961), all contracts for the hire of safe deposit boxes in Cuban banks were declared null and void as of February 17, 1961. Lessees were given thirty days to remove the contents of the boxes, in the presence of the director of the bank or banking agency. Foreign currency

found in such boxes was to be converted to pesos at the legal rate of exchange. As to securities or other negotiable instruments expressed in foreign currency, found in such boxes, the National Bank reserved the right to dispose of them. If boxes were not opened within the stipulated time, they were to be forced open.

Law 930, published in the Cuban Official Gazette of February 23, 1961, contained a number of provisions reinforcing the powers of the National Bank of Cuba in connection with control of foreign exchange transaction, and the sale of precious metals and gems.

Resolution No. 71 of the National Bank of Cuba, published in the Cuban press on March 15, 1961, provided for the forced conversion of all credits drawn in foreign currencies.

The record includes copy of an Act of October 6, 1961, setting out that on that date and pursuant to the Administrative Instruction 15, and others, agents of the Department for Recovery of Misappropriated Funds proceeded to open Safe Deposit Box 710, which had been rented by Teodor Littner. This Department carried on operations pursuant to Cuban Law 78 of February 19, 1959. (See Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, 1967 FCSC Ann. Rep. 52.)

The document of October 6, 1961 proceeds to list the following as all the items found therein:

- (1) 93 certificates of 10 shares each of STEIERMUEHL
PAPIRFABRIKS-UND VERLAGSGESELLSCHAFT
107 certificates of 5 shares each of the same firm
- (2) 99 certificates of 10 shares each from a German
concern
- (3) An envelope containing a large quantity of coupons
from various old European firms
- (4) 40 Bonds of the Queen of Hungary, issued in 1925,
of a value of 500 French francs each, with coupons
15/42 attached
- (5) 32 Bonds of Rumania issued in 1913, with
unnumbered coupons attached.

Pursuant to an Agreement of September 22, 1943, further described below, SAM WISHNIA claims 25 per cent of the above property; and MARY WISHNIA, as successor in interest to Michael Wishnia, claims a 37-1/2 per cent interest in the property. ANNA LITTNER, successor in interest to

Theodore Littner who had a 37-1/2 interest, contends that her claims against Michael Wishnia and SAM WISHNIA (her brothers) far exceed those interests and are to be offset against such claims.

The record contains copy of the Agreement of September 22, 1943 between the three principals and their wives, signed by all six, which provided in paragraph FIRST that the shares of the parties in Schedule A thereto were: Michel Wisznia - 40 per cent; Theodor Littner - 40% per cent; and SAM WISZNIA WISZNIA - 20 per cent. By rider to the agreement the shares were changed to 37-1/2 per cent, 37-1/2 per cent and 25 per cent, respectively, as to items (a) and (b) of paragraph III of Schedule A, leaving the original proportions applicable to items (c) and (d). This paragraph III is entitled "Holdings in Havana, Cuba" and lists:

- (a) 1,500 shares of Oestreiches Steyermuhl
Paper Manufacturing
- (b) 1,000 shares of Fereinigte Brauerein
Bruder Reininghaus
- (c) 86,265 various Hungarian interest coupons
- (d) 20,000 French francs of Hungarian Gold
Bonds.

With respect to the items found in the safe deposit box, the Commission finds as follows: The STEIERMUEHL PAPIRFABRIKS-UND VERLAGSGESELLSCHAFT is an Austrian corporation. The taking of possession by the Government of Cuba of certificates covering 1,465 shares of that corporation's stock did not confer ownership of such stock upon the Government of Cuba. This is true because the Commission adheres to the rule of international law that decrees of a state are not entitled to be given extraterritorial effect. (See FCSC Dec. & Ann. 106 and 376 (1968).) Further, certain interest coupons from various European firms, certificates issued by an unidentified German concern, and Rumanian bonds are insufficiently identified to establish their value, if any. Accordingly, these items of claim are denied.

No evidence has been submitted to establish that any diamonds, jewelry and miscellaneous personal property was taken from safe deposit box No. 710 by the Government of Cuba on or about October 6, 1961. Counsel considers their omission from the inventory to be due to their untraceable character.

In view of the foregoing, the Commission finds that claimants have not met the burden of proof in this respect, and these items of claim are also denied.

However, the 40 Hungarian bonds, each in the face amount of 500 French francs, represented a total of 20,000 French francs. Effective as of January 1, 1960, the French franc was devalued at the rate of 100 to 1, and the value of the "new" franc was established at 4,937 "new" francs per United States dollar (International Monetary Fund, XV International Financial Statistics, No. 11 at 122 (1962)). Consequently, the original face amount of 20,000 French francs became 200 "new" francs, having the equivalent of \$40.51 United States dollars. There is insufficient information available to evaluate the coupons attached to said bonds, and claim based thereon is denied.

Pursuant to the 1943 Agreement, ANNA LITTNER inherited a 40 per cent interest therein; MARY WISHNIA inherited a 40 per cent interest therein; and SAM WISHNIA had a 20 per cent interest therein. The Commission finds it not established that ANNA LITTNER is entitled to a certification on 100 per cent of the loss. Moreover, the question of set-off between the claimants for private interests among them, is not one for adjudication within the scope of Title V of the Act.

Accordingly, the Commission finds that claimants suffered losses within the scope of Title V of the Act, as set out below, as a result of the taking

of the contents of the safe deposit by the Government of Cuba on October 6, 1961:

ANNA LITTNER	\$16.20
MARY WISHNIA	16.20
SAM WISHNIA	8.11

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.

CERTIFICATIONS OF LOSS

The Commission certifies that ANNA LITTNER 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 Sixteen Dollars and Twenty Cents (\$16.20) with interest at 6% per annum from October 6, 1961 to the date of settlement; and

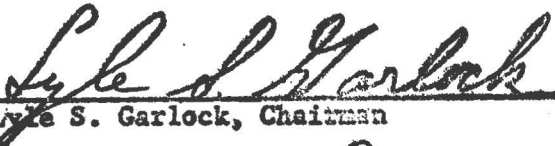
The Commission certifies that MARY WISHNIA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixteen Dollars and Twenty Cents (\$16.20) with interest at 6% per annum from October 6, 1961 to the date of settlement; and

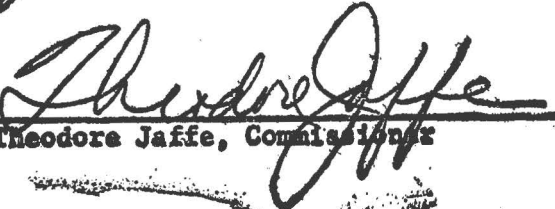
CU-3655

The Commission certifies that SAM WISHNIA 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 Eight Dollars and Eleven Cents (\$8.11) with interest at 6 percent per annum from October 6, 1961 to the date of settlement.

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

9 SEP 1970


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.

NOTE: 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. 5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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