

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

IN THE MATTER OF THE CLAIM OF

LYKES BROS. INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0662

Decision No. CU - 5743

Counsel for claimant: Macfarlane, Ferguson, Allison & Kelly

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 LYKES BROS. INC. for \$3,663,349.24, based on asserted ownership and loss of ranch properties 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 in 1949 under the laws of the State of Florida and that at all times more than 50% of the outstanding capital stock has been owned by nationals of the United States and that on January 28, 1966, 99.97% of the outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for the following assets of claimant which were located in Cuba:

Land			
	Candelaria Ranch	\$2,118,034.00	
	Lykes Ranch	<u>147,000.00</u>	\$2,265,034.00
Buildings			
	Candelaria Ranch	121,253.93	
	Lykes Ranch	<u>49,828.15</u>	171,082.08
Cattle			736,570.27
Fixed Machinery			47,185.34
Autos, Trucks & Tractors			59,509.96
Office Equipment			3,117.03
Corrals & Pens			9,375.68
Ranch Machinery & Equipment			90,566.09
Bank Accounts			272,240.66
Accounts Receivable			<u>13,644.49</u>
			\$3,668,325.60

In computing the amount of its claim the sum of \$4,976.36 was deducted from the assets for liabilities of claimant in Cuba. However, the Commission has consistently held that liabilities of United States nationals are not to be deducted.

(See Claim of Simmons Company, Claim No. CU-2303.)

The record shows and the Commission finds that LYKES BROS. INC. was the owner of two ranches in Cuba, Candelaria in Oriente Province and Lykes, consisting of properties known as Lloret and El Progreso, in Matanzas Province.

Candelaria Ranch contained 457.520 cabs of land (1 cab = 33.162 acres) with

4,303 head of cattle, machinery, equipment, and buildings. Lykes Ranch had 49 cabs with 579 head of cattle, machinery, equipment and buildings.

The record further shows and the Commission finds that the Cuban Institute of National Agrarian Reform (INRA) intervened the ranch Candelaria on June 27, 1959, appropriating 357.20 cabs of land and 3,245 head of cattle, and Lykes on October 10, 1959, appropriating all of the cattle and property located there, and on October 24, 1960 under Resolution No. 3 all of claimant's remaining assets in Cuba were nationalized. The Commission finds that claimant lost its assets by the actions of the Cuban Government within the meaning of Title V of the Act on June 27, 1959, October 10, 1959, and October 24, 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." 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.

In support of the claimed amounts, claimant has submitted statements of company officials, balance sheets for the years 1957, 1958, 1959, and for the first nine months of 1960, copies of reports to the United States Embassy in Cuba, and bank statements as of October 31, 1960. Claimant's Cuban assets as listed in the balance sheet for September 30, 1960 were as follows:

CU-0662

Current Assets:

Cash		\$ 272,260.66	
Accounts Receivable:			
Trade and Traffic	\$9,395.56		
Miscellaneous and			
Accruals	<u>492.50</u>	9,888.06	
Livestock Inventory		<u>90,235.94</u>	
	Total Current Assets		\$ 372,384.66
Special Funds and Deposits			3,756.43
Investments			4.00
Fixed Assets:			
Land		\$ 937,992.72	
Buildings	\$53,539.02		
Less Reserves	- <u>10,530.31</u>	43,008.71	
Fixed Machinery & Equipment	47,185.34		
Less Reserves	- <u>15,384.26</u>	31,801.08	
Autos & Trucks	11,926.00		
Less Reserves	- <u>6,740.56</u>	5,185.44	
Office Furniture & Equipment	3,117.03		
Less Reserves	- <u>1,617.30</u>	1,499.73	
Corrals, Pens & Fences	3,710.88		
Less Reserves	- <u>3,370.64</u>	<u>340.24</u>	
	Total Fixed Assets		1,019,827.92
Deferred Charges			<u>403.19</u>
Total Assets			<u>\$1,396,376.20</u>

Although claimant had lost some of its property prior to the date on which the balance sheet was issued, the entries under "Fixed Assets" are the same as in the balance sheets for December 31, 1958 and December 31, 1959, except for increased reserves and accompanying reductions in the net value of those assets. It is noted that, although the amount of \$90,566.09 is claimed for Ranch Machinery and Equipment, there is no such listing included in the balance sheets.

On the basis of the evidence of record and other evidence available to the Commission concerning the value of land, livestock and other

property in Cuba, the Commission finds that the value of claimant's assets taken by the Government of Cuba was as follows:

Land	\$2,265,034.00
Buildings	53,539.02
Cattle	736,570.27
Fixed Machinery & Equipment	31,801.08
Autos, Trucks & Tractors	5,185.44
Office Equipment	1,499.73
Corrals & Pens	3,710.88
Bank Accounts	272,240.66
Accounts Receivable	13,644.49
Total	<u>\$3,383,225.57</u>

The value of claimant's assets determined to have been taken on the dates of intervention and nationalization are:

June 27, 1959	\$2,019,735.47
October 10, 1959	376,319.25
October 24, 1960	<u>987,170.85</u>
	<u>\$3,383,225.57</u>

The Commission concludes that LYKES BROS. INC. sustained a loss in the amount of \$3,383,225.57 within the meaning of Title V of the Act as a result of the actions of the Government of Cuba on June 27, 1959, October 10, 1959 and October 24, 1960.

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 as follows:

<u>FROM</u>	<u>ON</u>
June 27, 1959	\$2,019,735.47
October 10, 1959	376,319.25
October 24, 1960	<u>987,170.85</u>
	<u>\$3,383,225.57</u>

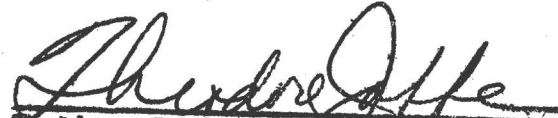
CERTIFICATION OF LOSS

The Commission certifies that LYKES BROS. INC. 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 Million Three Hundred Eighty-Three Thousand Two Hundred Twenty-Five Dollars and Fifty-Seven Cents (\$3,383,225.57) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 19 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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).)

CU-0662