

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

IN THE MATTER OF THE CLAIM OF

EARL BRANDON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1254

Decision No. CU 3711

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 \$17,513.52, was presented by EARL BRANDON based upon certain stock interests and an ownership interest in a partnership. Claimant has been a national of the United States since birth.

This is the first claim involving Proveedora Industrial, S.A. and Techo Fresco de Cuba, S.A. Claims have been filed by several other stockholders, thus this decision may, where applicable, serve as a precedent in the determination of those other 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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to December 5, 1962, has been the owner of 368 shares of stock of Proveedora Industrial, S.A.; 16 shares of stock of Techo Fresco de Cuba, S.A.; and a 37.5% interest in a partnership enterprise owned by claimant and others.

Provedora was engaged in the purchase and sale of machinery, spare parts, yarns and chemical products for the textile industry; Brandon & Cia. acted as exclusive agents of United States manufacturers of machinery, chemicals, yarns and spare parts for the textile and other industries in Cuba; and Techo Fresco de Cuba, S.A. was organized for the importation, distribution, application, and manufacture of materials for coating of roofs.

On December 5, 1962, the Government of Cuba published its Law 1076 in its Official Gazette. This law authorized the nationalization of private commercial enterprises dedicated to clothes, weaving, footwear and hardware. It clearly appears that these three enterprises were within the scope of Law No. 1076 (supra). Accordingly, in the absence of evidence to the contrary, the Commission finds that Proveedora, Techo and Brandon & Cia. were nationalized by the Government of Cuba on December 5, 1962. (See Claim of Perkins Marine Lamp and Hardware Corporation, Claim No. CU-0232, 1967 FCSC Ann. Rep. 42.)

The two corporations and Brandon & Cia. were organized under the laws of the Republic of Cuba and do not qualify as "nationals 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, claimant is entitled to file this claim based upon his ownership therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

The record includes copies of balance sheets for Proveedora Industrial, S.A.; Techo Fresco de Cuba, S.A., and Brandon & Cia. as of June 30, 1960, August 31, 1960 and June 30, 1960, respectively, which are set out below.

PROVEEDORA INDUSTRIAL, S.A.

A S S E T S

CURRENT ASSETS:

Petty Cash		\$ 10.00	
Cash in Bank		2,679.38	
Drafts	\$ 3,523.87		
Less: Drafts Discounted	<u>3,146.56</u>	377.31	
Accounts Receivable		<u>16,463.80</u>	\$19,530.49
Inventory			17,519.95
Deposits and Prepaid Insurance			1,181.67

FIXED ASSETS:

Furniture and Fixtures		4,737.98	
Less: Reserve for Depreciation		<u>3,175.01</u>	1,562.97
Automobiles		7,100.00	
Less: Reserve for Depreciation		<u>889.09</u>	<u>6,210.91</u>

Total Assets \$46,005.99

LIABILITIES AND CAPITAL

LIABILITIES:

Loans Payable		\$ 1,500.00	
Drafts Payable		5,176.47	
Accounts Payable		10,901.54	
Taxes Payable		2,323.72	
Expenses Payable		207.42	
Vacation Payable		<u>638.56</u>	\$20,747.71

CAPITAL:

Stock issued	\$99,000.00		
Less: Loss in sale of stock	<u>5,700.00</u>	\$93,300.00	

DEFICIT:

Balance January 1, 1960	\$73,680.95		
Less: Profit - 6 months 1960	<u>5,639.23</u>	<u>\$68,041.72</u>	<u>25,258.28</u>

Total Liabilities and Capital \$46,005.99

Thus, the calculation of net worth of Proveedora Industrial, S.A. is as follows:

Total Assets	\$46,005.99
Less Current Liabilities	<u>20,747.71</u>
Net Worth	\$25,258.28

The Commission finds, based upon the evidence of record, that Proveedora Industrial, S.A. had 990 shares of capital stock outstanding on December 5, 1962, the date of nationalization, and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Proveedora Industrial, S.A. was \$25.5134 per share of capital stock.

Accordingly, the Commission finds that claimant's loss in connection with his 368 shares of Proveedora Industrial, S.A. on December 5, 1962 was \$9,388.93.

TECHO FRESCO DE CUBA, S. A.

A S S E T S

CURRENT ASSETS:

Cash in Bank	\$	323.85	
Accounts Receivable		1,216.81	
Inventory Stock and Raw Material		<u>1,654.39</u>	\$ 3,195.05

FIXED ASSETS:

Furniture and Fixtures	\$	1,103.66	
<u>Less: Reserve for Depreciation</u>		<u>183.97</u>	919.69
Equipment	\$	1,254.19	
<u>Less: Reserve for Depreciation</u>		<u>104.59</u>	1,149.60
Billboards		<u>213.00</u>	2,282.29
Roofing Formulas			<u>2,000.00</u>

Total Assets			<u>\$ 7,477.34</u>
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LIABILITIES AND CAPITAL

CURRENT LIABILITIES:

Accounts Payable	\$	88.00
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CAPITAL:

Jacob Brandon	\$	1,600.00	
Earl Brandon		1,600.00	
R. A. Pratchett		<u>1,600.00</u>	4,800.00
Profit in Stock Sale		1,500.00	
Reserve for Contingencies		1,000.00	
Undistributed Profits		<u>89.34</u>	

Total Capital and Liabilities			<u>\$ 7,477.34</u>
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The calculation of net worth of Techo Fresco de Cuba, S.A. is as follows:

Total Assets	\$7,477.34
Less Current Liabilities	<u>88.00</u>
Net Worth	\$7,389.34

The Commission further finds, based upon the evidence of record, that Techo Fresco de Cuba, S.A. had 48 shares of capital stock outstanding on the date of its nationalization and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Techo Fresco de Cuba, S.A. was \$153.9445 per share of capital stock.

Accordingly, the Commission concludes that EARL BRANDON, as holder of 16 shares of Techo Fresco de Cuba, S.A. stock, suffered a loss in the amount of \$2,463.11 within the meaning of Title V of the Act, as a result of the nationalization of Techo Fresco de Cuba, S.A. on December 5, 1962.

BRANDON Y COMPANIA

A S S E T S

CURRENT ASSETS:

Cash in Bank	\$ 579.61	
Accounts Receivable	460.36	
Commission Receivable	<u>24,288.92</u>	\$25,328.89
Prepaid Insurance		348.10

FIXED ASSETS:

Automobile	\$ 4,247.00		
Less: Reserve for Depreciation	<u>1,517.62</u>	\$ 2,729.28	
Furniture and Fixtures	3,273.59		
Less: Reserve for Depreciation	<u>1,297.86</u>	<u>1,975.73</u>	<u>4,705.01</u>
Total Assets			<u>\$30,382.00</u>

LIABILITIES AND CAPITAL

CURRENT LIABILITIES:

Accounts Payable	\$15,112.80	
Taxes Payable	<u>184.44</u>	\$15,297.24

CAPITAL:

Jacob Brandon	\$ 2,250.00	
Earl Brandon	2,250.00	
R. A. Pratchett	<u>1,500.00</u>	6,000.00
Reserve for Contingencies		3,000.00
Undistributed Profits		<u>6,084.76</u>
Total Capital and Liabilities		<u>\$30,382.00</u>

The calculation of net worth of Brandon y Compania, is as follows:

Total Assets	\$30,382.00
Less Current Liabilities	<u>15,297.24</u>
Net Worth	\$15,084.76

The Commission finds, based upon the evidence of record, that EARL BRANDON as owner of a 37.5% interest in Brandon y Compania suffered a loss in the amount of \$5,656.79 within the meaning of Title V of the Act, as a result of the nationalization of Brandon y Compania on December 5, 1962.

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 EARL BRANDON 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 Seventeen Thousand Five Hundred Eight Dollars and Eighty-three Cents (\$17,508.83) with interest at 6% per annum from December 5, 1962 to the date of settlement.

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

JUN 19 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).)