

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

BARTLETT- COLLINS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2192

Decision No. CU 2058

Counsel for claimant:

Loeffler & Allen

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 BARTLETT-COLLINS COMPANY in the amount of \$669,933.58 based upon the asserted loss of stockholder interests in two Cuban entities and upon the asserted loss of certain accounts receivable, notes receivable, and advances.

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 discloses that the claimant corporation was organized in the State of Delaware on October 13, 1937, and that from at least July 11, 1961 until presentation of this claim on April 27, 1967, more than 50% of the claimant's outstanding capital stock was owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

A principal officer of the claimant corporation states that all of claimant's outstanding capital stock is held by nationals of the United States.

Claimant owned 1,495 shares of Industrias Bartlett-Collins De Cuba, S. A., a Cuban corporation having principal offices in Wajay, Cuba and 212 shares of Compania Inversionista Cabin, S. A., a Cuban corporation having principal offices in Rancho Boyeros, Cuba. These companies were engaged in the china and glassware business. Claimant contends that the properties of both corporations were confiscated by the Republic of Cuba without compensation.

Compania Inversionista Cabin, S. A. was listed as nationalized by the Government of Cuba on January 8, 1962, and Industrias Bartlett-Collins De Cuba, S. A. was listed as nationalized on March 27, 1962, in the Cuban Official Gazette, (both pursuant to Cuban Law 890 Official Gazette, October 13, 1960). The Commission concludes that claimant sustained a loss as a result of nationalization of the aforesaid entities, and in the

absence of evidence to the contrary, concludes that said loss was sustained on January 8, 1962, with respect to its stockholder interest in Compania Inversionista Cabin, S. A., and on March 27, 1962, with respect to its stockholder interest in Industrias Bartlett-Collins De Cuba, S. A.

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 basis of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost or replacement.

Claimant has stated that the dollar amount of its stockholder interest should be computed at \$154,843.00 for its interest in Industrias Bartlett-Collins De Cuba, S. A. and at \$162,945.57 for its interest in Compania Inversionista De Cabin, S. A. Claimant asserts that these amounts constitute its investment in these companies but has not set forth the basis of its computation.

In support of its claim, claimant has submitted balance sheets and income statements for the two Cuban corporations for the year 1960. In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The balance sheets examined and prepared by an acceptable accounting firm are set forth below:

CU-2192

Industrias Bartlett-Collins De Cuba, S. A.

Balance Sheet

October 31, 1960

Assets

Current assets:

Cash in bank and on hand		\$ 15,428.96
Receivables - Trade		3,660.78
Inventories		
Finished	\$ 23,900.27	
Blanks, other materials and supplies	31,088.00	
In transit	<u>2,596.36</u>	57,584.63
Prepaid expenses:		
Insurance	2,247.15	
Advances on salaries	2,151.05	
Commissions	15,000.00	
Others	<u>954.26</u>	20,352.46
Total current assets		<u>97,026.83</u>

Due from affiliated company:

Compania Inversionista Cabin, S. A. 13,151.93

Investments, at cost:

Ferrocarriles Occidentales de Cuba, S. A.	200.00	
Compania Cubana de Electricidad	<u>500.00</u>	700.00

Plant and equipment, at cost	157,813.45	
Less allowance for depreciation	<u>17,722.74</u>	140,090.71

Goodwill 110,000.00

Trademarks 342.97

Organization expenses, less amortization \$1,337.74 3,677.49
\$364,989.93

Liabilities

Current liabilities:

Accounts payable		2,432.51
Accrued taxes		6,948.35
Accrued payroll and vacations		5,245.10
Accrued commissions		1,425.96
Other accrued expenses		1,320.80
Bartlett-Collins Company, current account		17,619.24
Bartlett-Collins Company, accrued interest		<u>12,658.54</u>

Total current liabilities \$ 47,650.50

Long term debt:

Bartlett-Collins Company - 3-1/2% loan 155,000.00

Stockholders' equity

Common stock, par value \$100.00 per share:

 Authorized 2,500 shares; issued and
 outstanding 1,500 shares *

\$150,000.00

Retained earnings 12,339.43 162,339.43

\$364,989.93

*This had been increased to 1,550 shares before March 27, 1962.

COMPANIA INVERSIONISTA CABIN, S. A.

Balance Sheet

December 31, 1960

Assets

Current assets:

Accounts receivable - trade		\$	580.00
Accounts receivable - others			60.00
Inventories, at cost:			
Finished stock	\$ 4,480.00		
Raw materials	140.00		4,620.00
Deposits			340.00
Prepaid expenses:			
Workmen compensation insurance	69.15		
Municipal taxes	52.43		121.58
Total current assets			<u>5,721.58</u>

Fixed assets:

Land		18,888.14	
Buildings	\$ 67,239.81		
Electrical installations	13,937.24		
Road and bridge	1,719.50		
Fences	206.80		
Well	963.84		
	<u>84,067.19</u>		
Less reserve for depreciation	18,425.46	65,641.73	
Machinery and equipment	99,488.64		
Valves, tubing and faucets	16,491.58		
	<u>115,980.22</u>		
Less reserve for depreciation	39,983.76	75,996.46	
Furniture and fixtures	1,712.50		
Less reserve for depreciation	<u>1,712.50</u>		
Tools		<u>1,990.13</u>	<u>162,516.46</u>
			<u>\$168,238.04</u>

Liabilities

Current liabilities:

Bank overdraft		\$	365.28
Bartlett-Collins Company			4,032.44
Accrued taxes			<u>1,653.50</u>
Total current liabilities			6,051.22

Industrias Bartlett-Collins de Cuba, S. A.

17,000.00

Stockholders equity:

Capital stock:			
Authorized 250 common shares			
\$1,000.00 each - \$250,000.00			
Issued and outstanding 214 shares*	\$214,000.00		
Capital surplus	23,265.57		
Surplus or (deficit):			
Balance at beginning of year	\$(82,810.18)		
Loss for the year	<u>(9,268.57)</u>	<u>(92,078.75)</u>	<u>145,186.82</u>
			<u>\$168,238.04</u>

*This had been increased to 250 shares before January 8, 1962.

The balance sheets enumerate the assets, tangible and intangible, and the liabilities of the enterprises. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities, in the usual situation, represents the owners' equity, or net worth. The same result, therefore, may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

However, with respect to Industrias Bartlett-Collins De Cuba, no evidence in support of the designated asset of "good will" in the amount of \$110,000.00 was submitted. Further, the income statements in evidence for Industrias Bartlett-Collins De Cuba, S. A. disclose that said company was operating at a loss. Accordingly, except as a bookkeeping entry, there is no basis in the record for a finding that the subject company had any "good will" value. Moreover, it appears that the item of "organizational expenses" is merely a bookkeeping expense item, and should not be considered as an asset for purposes of certification of loss.

Thus, the calculation of net worth of the Cuban entities is as follows:

Industrias Bartlett-Collins De Cuba, S. A.

Total assets (adjusted by subtracting good will valued at \$110,000.00 and organizational expenses valued at \$3,677.49)	\$251,312.44
Less current liabilities and long term debt	<u>202,650.50</u>
Net Worth	\$ 48,661.94

Compania Inversionista Cabin, S. A.

Total assets	\$168,238.04
Less current liabilities and debt to affiliated company	<u>23,051.22</u>
Net Worth	\$145,186.82

The Commission finds, based upon the evidence of record, that Industrias Bartlett-Collins De Cuba, S. A. had 1,550 shares of stock outstanding on the date of its nationalization, and that Compania Inversionista Cabin, S. A. had 250 shares of stock outstanding on the date of its nationalization, and concludes that as a result of the nationalization of Industrias Bartlett-Collins De Cuba, S. A. by the Government of Cuba on March 27, 1962, claimant suffered a loss on that date of \$46,935.23 for its interest (1,495 shares), and that as a result of nationalization of Compania Inversionista Cabin, S. A. by the Government of Cuba on January 8, 1962, claimant suffered a loss on that date of \$123,118.42, for its interest (212 shares), all within the meaning of Title V of the Act.

A portion of this claim, in the amount of \$352,145.01, is based upon the asserted loss of certain accounts receivable, notes receivable, and advances. In support of this portion of its claim, claimant has submitted photocopies of various invoices, reflecting the following sales of goods to Cuban consignees:

I. Industrias Bartlett-Collins De Cuba, S. A.

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Amount</u>
October 14, 1959	9242	\$ 2,234.88
October 20, 1959	9869	3,036.69
October 20, 1959	9983	3,132.41
October 30, 1959	11371	3,840.66
November 2, 1959	11451	108.25
November 2, 1959	11452	81.22
November 2, 1959	11453	2,693.92
November 3, 1959	11468	2,693.90
November 4, 1959	11720	4,214.16
November 4, 1959	11721	2,871.33
November 6, 1959	11900	2,693.90
November 23, 1959	13245	5,389.23
November 24, 1959	13349	4,468.17
December 15, 1959	14176	<u>3,463.42</u>
	Total	\$40,922.14

II. Comercial B. Robayna, S. A.

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Amount</u>
March 12, 1959	22694	\$ 1,984.36
March 13, 1959	22812	3,932.39
March 18, 1959	23207	677.90
March 20, 1959	23436	1,984.36
March 20, 1959	23437	2,284.95
March 25, 1959	23778	577.36
April 15, 1959	25999	664.81

April 16, 1959	26002	2,405.24
May 8, 1959	27939	3,975.64
June 23, 1959	31893	1,984.36
July 1, 1959	101	1,984.36
July 2, 1959	228	1,327.71
July 3, 1959	377	1,984.36
July 6, 1959	456	3,247.55
August 26, 1959	4877	4,596.31
August 28, 1959	5298	1,550.29
August 31, 1959	5302	5,014.87
September 8, 1959	5891	1,984.36
October 12, 1959	9016	4,329.38
October 12, 1959	9017	4,076.74
October 16, 1959	9801	4,762.67
October 22, 1959	10268	4,593.94
October 26, 1959	10501	<u>4,550.39</u>
	Total	\$64,474.30

Claimant states that the aforementioned accounts receivable from Industrias Bartlett-Collins De Cuba, S. A., should be reduced in the amount of \$401.57, representing credit issued for breakage and in the further amount of \$1,744.10, representing import duties; and that the aforementioned accounts receivable from Comercial B. Robayana, S. A., should be reduced in the amount of \$577.16, representing credit issued for breakage. Claimant states that it has not received the aforementioned funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban

Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049).

Accordingly, with respect to the debts due the claimant, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the respective invoice dates with respect to those dates subsequent to September 29, 1959. However, with respect to those invoice dates prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568.

Finally, claimant has submitted a photocopy of a promissory note drawn by Industrias Bartlett-Collins De Cuba, S. A. in the amount of \$155,000.00 and payable to the claimant on July 1, 1963. This amount is reflected on the balance sheet of Industrias Bartlett-Collins De Cuba, S. A., of October 31, 1960 as a long term debt. Claimant states that it has never received payment on said note.

As to this portion of the claim, the Commission holds that claimant suffered a loss in the amount of \$155,000.00, within the meaning of Title V of the Act as a result of the nationalization of Industrias Bartlett-Collins De Cuba, S. A., on March 27, 1962. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]).

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>On</u>	<u>As To</u>
September 29, 1959	\$ 41,584.02
October 12, 1959	8,406.12
October 14, 1959	89.21
October 16, 1959	4,762.67
October 20, 1959	6,169.10
October 22, 1959	4,593.94
October 26, 1959	4,550.39
October 30, 1959	3,840.66
November 2, 1959	2,883.39
November 3, 1959	2,693.90
November 4, 1959	7,085.49
November 6, 1959	2,693.90
November 23, 1959	5,389.23
November 24, 1959	4,468.17
December 15, 1959	3,463.42
January 8, 1962	123,118.42
March 27, 1962	<u>201,935.23</u>
Total	\$427,727.26

CERTIFICATION OF LOSS

The Commission certifies that BARTLETT-COLLINS COMPANY 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 Four Hundred Twenty-Seven Thousand Seven Hundred Twenty-Seven Dollars and Twenty-Six Cents (\$427,727.26) with interest thereon at 6% per annum from the dates of loss to the date of settlement.

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

3 JUL 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
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).)