

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

IN THE MATTER OF THE CLAIM OF

ALBERT RODE

Claim No. CU-3039

Decision No. CU- 4056

Under the International Claims Settlement  
Act of 1949, as amended

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 ALBERT RODE in the amount of \$12,000.00 based upon the loss of his ownership interests in two Cuban enterprises known as Aceros Unidos, S.A. and Urb. Sitio Marrero, S.A. Claimant has been a national of the United States since his naturalization on May 5, 1952.

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.

On the basis of the evidence of record, the Commission finds that ALBERT RODE is, and since prior to June 29, 1961, has been the owner of 110 shares at \$100 nominal value each (the peso being on a par with the United States dollar) out of the total outstanding shares of stock of Aceros Unidos, S.A.

Evidence available to the Commission establishes that Aceros Unidos, S.A., was nationalized by the Cuban Government on June 29, 1961. Since the Cuban firm was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Park, Davis & Company, Claim No. CU-0180, 1967 FGSC 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". 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.

Claimant has submitted a balance sheet in the Spanish language for Aceros Unidos, S.A., dated September 30, 1959, containing figures which appears to have been set up by a Public Accountant and maintained under accepted accounting practices. The Balance Sheet as translated reflects the following:

UNITED STEEL OF CUBA, S.A.

GENERAL BALANCE

SEPTEMBER 30, 1959

ASSETS

Current Assets:

Payroll Funds	\$ 4,975.00	
Cash on Hand or In Safe	6,245.09	
Small Safe	<u>25.00</u>	\$ 11,245.09
Accounts Collectable (A-1)		318,736.30
Various Accounts Collectable (A-2)		8,291.14
Raw Material		865,352.21
Finished Products		182,669.33
Oil		591.49
Fabrication, Materials & Supplies		2,140.96
Fees to official & Employees		2,179.36
Accessories & Replacements		<u>437.90</u>
Total Current Assets		\$1,391,644.78
Merchandise in Transit (A-3)		22,774.81
Railroad Shares	\$ 2,600.00	
Steel & Iron Union	<u>1,998,000.00</u>	2,000,600.00

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Fixed Assets:

Lands	\$ 102,250.00
Properties, Plants & Equipment	833,312.17
Furniture & Fixtures	8,471.93
Tools	<u>4,647.85</u>

Total Fixed Assets \$ 943,681.95

Works in Construction 2,135.42

Deferred Assets & Payments in Advance:

Insurance Premiums paid in Advance	\$ 2,081.00
Office Effects in Existence	222.50
Tax on Sale paid in Advance	81,535.35
Stamps	225.21
Organization Expenses	<u>53,947.48</u>

Deferred Assets & Payments in Advance(Total) \$ 138,011.54

Other Assets:

Deposits in Guarantee 11,020.00

Total Assets \$4,514,867.90

LIABILITIES & CAPITAL

Current Liabilities:

Continental Bk. of Cuba(Draft)	\$ 6,185.88
Bank Loan	170,000.00
Accounts Payable	39,017.56
Contracts & Wrks to Pay	1,709.84
Effects to pay	826,652.63
Accumulated Taxes to Pay(A-6)	38,789.20
Back Retirement to Pay	8,188.33
Accumulated Expenses to Pay(A-7)	4,229.26
Allocations to Pay	69,400.00
Reserve for Depreciation	72,000.00
Reserve for Paying off Organization Expenses	<u>6,000.00</u>

Total Current Liabilities \$1,242,172.70

Capital:

Authorized	\$5,000,000.00	
Less: Shares to Issue	<u>2,151,800.00</u>	
		\$2,848,200.00

Surplus:

Balance on January 1, 1959	\$ 221,882.67	
Less: Previous Year Adjustment	<u>8,712.62</u>	
	\$ 213,170.05	
Plus: Profit Statement	<u>211,325.15</u>	
		\$ 424,495.20

Total Liabilities & Capital	<u><u>\$4,514,867.90</u></u>
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The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, and finds that the values for the subject property as reflected in the September 30, 1960 balance sheet are the most appropriate basis of valuation.

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

Total Assets	\$4,514,867.90
Less Liabilities	<u>1,242,172.70</u>
Net Worth	\$3,272,695.20

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The balance sheet reflects that 28,482 shares were outstanding. Thus each had a value of \$114.9039. Accordingly, the Commission finds that claimant, as holder of 110 shares of the outstanding shares of stock of Aceros Unidos, S.A., suffered a loss as a result of the taking of this business enterprise by the Government of Cuba, in the amount of \$12,639.43, within the meaning of Title V of the Act.

With respect to the portion of this claim based on shares of stock in Urb. Sitio Marrero, S.A., the value claimed of \$1,000 is the par value recited in the provisional certificate issued December 29, 1958 whereas Title V requires a finding of value as of the date of loss. (See Claim of Lucia W. Mendoza, Claim No. CU-3219.) Information on this point was suggested by Commission's letters of December 14, 1967, January 26, 1968, April 23, 1968, and June 14, 1968.

In the absence of specific evidence of value on the date of loss the Commission is constrained to hold that claimant has not established the extent of his loss with respect to the portion of his claim. Accordingly, this portion of the claim is denied.

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.

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CERTIFICATION OF LOSS

The Commission certifies that ALBERT RODE 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 Twelve Thousand Six Hundred Thirty-Nine Dollars and Forty-Three Cents (\$12,639.43) with interest at 6% per annum from June 29, 1961 to the date of settlement.

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

OCT 15 1969

*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).)

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