

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

IN THE MATTER OF THE CLAIM OF

MATTHEW L. MAYHER, MATTHEW R. MAYHER,
ERNEST J. MAYHER, ARNOLD J. MAYHER,
NICKI ORITI, FRANK HEGYES, JOSEPH
SOBCZAK and TREMONT TOOL & GAGE, INC.

Claim No. CU-0224

Decision No. CU 3313

Under the International Claims Settlement
Act of 1949, as amended

Represented by Ventanas Del Caribe, S.A.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented initially by Ventanas Del Caribe, S.A., a Cuban enterprise organized in Cuba under Cuban laws. Since it did not qualify as a national of the United States, as required under Section 504(a) of the Act, Ventanas Del Caribe, S.A. petitioned to represent its stockholders who were United States nationals and, by Order No. 3 issued October 13, 1966, the Commission authorized Ventanas Del Caribe, S.A. to act as agent for its stockholders who were United States nationals. The record establishes that MATTHEW L. MAYHER, MATTHEW R. MAYHER, ERNEST J. MAYHER, ARNOLD J. MAYHER, NICKI ORITI, FRANK HEGYES, JOSEPH SOBCZAK and TREMONT TOOL & GAGE, INC. have been nationals of the United States at all times pertinent hereto.

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 claim is asserted for the total assets of Ventanas Del Caribe, S.A., in the amount of \$193,948.49, and \$56,000.00 for good will, making a total of \$249,948.49. Ventanas Del Caribe, S.A. was organized in 1956 for the purpose of manufacturing and installing aluminum windows and doors and was located at 504 26th Street, Vedado, Habana, Cuba. It is asserted that the company was intervened on September 23, 1960.

The evidence of record contains a copy of the Official Gazette of the Government of Cuba dated October 24, 1960, which lists Ventanas Del Caribe, S.A. as being nationalized under Resolution No. 3, pursuant to Law 851 of July 6, 1960.

The Commission finds, in the absence of evidence to the contrary, that the business and properties of Ventanas Del Caribe, S.A. in Cuba were nationalized on 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." 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 contains a copy of a balance sheet showing the financial condition of Ventanas as of June 30, 1960, a monthly statement of its finances beginning with January, 1959 and ending with July 1, 1960, copies of notes payable by the firm, letters to stockholders indicating the deposit of the stock certificates as collateral for a loan from the Bank of China.

On the basis of the record, the Commission finds that MATTHEW L. MAYHER, MATTHEW R. MAYHER, ERNEST J. MAYHER, and ARNOLD J. MAYHER, each owned 90 shares of Ventanas Del Caribe, S.A. common stock, NICKI ORITI owned 40 shares, FRANK HEGYES and JOSEPH SOBCZAK owned 50 shares each, and TREMONT TOOL & GAGE, INC. owned 100 shares. These 600 shares are all the outstanding shares.

The balance sheet for June 30, 1960 is as follows:

<u>ASSETS</u>		
Current		
Cash on hand and on deposit	\$ 3,390.80	
Notes and accounts receivable	63,795.54	
Other receivables	<u>2,348.16</u>	\$ 69,534.50
Investment and Miscellaneous Receivables		
Bonds	500.00	
Sundry Receivables	55.66	
Deposits (Prepaid Taxes)	<u>4,080.56</u>	4,636.22
Inventories		24,050.78
Plant and Equipment		
Machinery	81,791.40	
Trucks	2,727.00	
Furniture and Fixtures	<u>2,133.60</u>	86,147.54
Less depreciation of \$4,585.62		
Intangibles		
Organization Costs	4,573.20	
Installation Costs	2,293.05	
Improvement on Leased Property	<u>83.20</u>	<u>9,579.45</u>
TOTAL ASSETS		<u>\$193,948.49</u>

LIABILITIES

Current		
Notes and accounts payable	\$11,772.20	
Taxes Payable	3,916.42	
Other Payables		
Tremont Tool & Gage, Inc.	11,600.00	
Interest Payable	2,339.32	
Officers Salaries and Fees	15,790.06	
Accrued Expenses Payable	833.67	
Arnold J. Mayher	\$15,603.03	
Matthew L. Mayher	1,000.00	
Ernest J. Mayher	1,000.00	
Matthew R. Mayher	1,000.00	
	18,603.03	
Bank Loan	<u>35,500.00</u>	\$100,354.70
Capital		
Capital Stock - Common	60,000.00	
Surplus	<u>33,593.79</u>	<u>93,593.79</u>
TOTAL LIABILITIES AND CAPITAL		<u>\$193,948.49</u>

It should be noted that, although the totals reported in the balance sheet are correct, the list of Assets does not include an item for Tools and Equipment valued at \$4,081.16 and the amount for Installation Costs should be \$4,923.05. These corrections are taken from the monthly journal and, when substituted in the balance sheet, establish the correctness of the totals recorded.

Balance sheets enumerate the assets, tangible and intangible, and the liabilities of enterprises. The liabilities consist of creditors' claims which are contractual in nature, and those of the owners, 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 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 Ventanas Del Caribe, S.A., it appears that the item for "Organizational Costs" is a bookkeeping expense item and should not be considered as an asset for purposes of certification of loss. Claim is also asserted for the amount of \$56,000.00 for "good will". There is no entry on the balance sheet showing good will and the only statement concerning it is that of the manager of Ventanas who

stated that the total value of the company's assets and good will was \$249,948.49. After consideration of the records of the company as submitted, the Commission holds that there is no basis for a finding that the subject company had any "good will" value.

Thus, the calculation of the net worth of Ventanas Del Caribe, S.A. is as follows:

Total assets (adjusted by subtracting organizational costs)	\$189,375.29
Less current liabilities and long term debts	<u>100,354.70</u>
Net Worth	\$ 89,020.59

The Commission finds, based upon the evidence of record, that Ventanas Del Caribe, S.A. sustained a total loss of \$89,020.59, and the loss per share of common stock was \$148.3676 for each of the 600 shares outstanding on the date of its nationalization.

Although no claim has been asserted for the amounts due and owing to MATTHEW L. MAYHER, MATTHEW R. MAYHER, ERNEST J. MAYHER, ARNOLD J. MAYHER, and TREMONT TOOL & GAGE, INC., the Commission finds that each is entitled to file a claim based upon the amount owed which represents a debt of a nationalized Cuban enterprise within the purview of Section 502(3) of the Act.

Accordingly, the Commission concludes that the claimants suffered losses as a result of their stock ownership in Ventanas Del Caribe, S.A. and five stockholders suffered losses of the debts due from the Cuban enterprise within the meaning of Title V of the Act as a result of the actions of the Government of Cuba as follows:

MATTHEW L. MAYHER for his ownership of 90 shares of stock and debt of \$1,000.00 -	\$14,353.08
MATTHEW R. MAYHER for his ownership of 90 shares and debt of \$1,000.00 -	\$14,353.08
ERNEST J. MAYHER for his ownership of 90 shares and debt of \$1,000.00	\$14,353.08
ARNOLD J. MAYHER for his ownership of 90 shares, past due salary, expenses and debt due	\$45,746.17
NICKI ORITI for his ownership of 40 shares -	\$ 5,934.70
FRANK HEGYES for his ownership of 50 shares -	\$ 7,418.38
JOSEPH SOBCZAK for his ownership of 50 shares -	\$ 7,418.38
TREMONT TOOL & GAGE, INC. for its ownership of 100 shares and debt due -	\$26,436.76

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 MATTHEW L. MAYHER 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 Fourteen Thousand Three Hundred Fifty-Three Dollars and Eight Cents (\$14,353.08) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that MATTHEW R. MAYHER 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 Fourteen Thousand Three Hundred Fifty-Three Dollars and Eight Cents (\$14,353.08) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that ERNEST J. MAYHER 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 Fourteen Thousand Three Hundred Fifty-Three Dollars and Eight Cents (\$14,353.08) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that ARNOLD J. MAYHER 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 Forty-Five Thousand Seven Hundred Forty-Six Dollars and Seventeen Cents (\$45,746.17) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that NICKI ORITI 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 Five Thousand Nine Hundred Thirty-Four Dollars and Seventy Cents (\$5,934.70) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that FRANK HEGYES 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 Seven Thousand Four Hundred Eighteen Dollars and Thirty-Eight Cents (\$7,418.38) with interest at 6% per annum from October 24, 1960 to the date of settlement;

the Commission certifies that JOSEPH SOBCZAK 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 Seven Thousand Four Hundred Eighteen Dollars and Thirty-Eight Cents (\$7,418.38) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

the Commission certifies that TREMONT TOOL & GAGE, 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 Twenty-Six Thousand Four Hundred Thirty-Six Dollars and Seventy-Six Cents (\$26,436.76) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

NOV 27 1968

Edward v. B. Sutton
Edward v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feidberg
Sidney Feidberg, 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).)