

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

IN THE MATTER OF THE CLAIM OF

BETTIE LEE ROWE,
EXECUTRIX, ESTATE OF
JOHN S. ROWE, DECEASED

Claim No. CU - 0774

Decision No. CU 6253

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Mendes & Mount
By: Matthew J. Corrigan, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented on July 6, 1966, by JOHN S. ROWE, in the amount of \$118,462.30, based upon the asserted ownership and loss of stock interests in two Cuban corporations. JOHN S. ROWE was a national of the United States from birth until his demise on August 30, 1969. BETTIE LEE ROWE having been appointed Executrix of the estate of her late husband, JOHN S. ROWE, is substituted as claimant herein in her representative capacity.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The claim, filed by decedent, is based upon the asserted ownership and loss of stock interests in two Cuban corporations, Servicio Pan Americano de Proteccion, S.A., or Pan American Protective Service, Inc., incorporated in May 1952 and hereafter referred to as PAPS, and Servicio Pan Americano Blindado, S.A., or Pan American Armored Service, Inc., incorporated in August 1957 and referred to hereafter as PAAS.

The record includes copies of the stock certificates issued to the decedent, including 1,167 shares of PAPS and 17,623 shares of PAAS. Further, the record includes a State Department file, newspaper or rotogravure data with photographs of the personnel, equipment and facilities of PAPS, lists of the corporate clientele, correspondence and affidavits executed by officers of the corporations, decedent and others with personal knowledge of the ownership of stock interests in the name of decedent and others. Additionally, the decedent also submitted copies of correspondence to the Cuban officials concerning the incorporation, development and progress of the business enterprises as of the time of intervention by the Government of Cuba on May 3, 1960, when an interventor was appointed pursuant to

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Resolution 3617. Based upon the entire record, the Commission finds that the decedent owned the stock interests, as described above; and that such ownership interests in the business enterprises in question were intervened and effectively taken by the Government of Cuba on May 3, 1960.

Since the Cuban corporations, subject of the claim, were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" as 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. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of such ownership interest. (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. 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.

The evidence of record pertaining to the value of PAPS includes a certified balance sheet dated December 31, 1959, prepared immediately prior to loss and which reflects the following:

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ASSETS

Current Assets

Cash in Banks		\$ 58,486.37	
Cash on Hand		1,500.00	
Accounts Receivable:			
Customers	\$ 8,843.12		
Employees	<u>1,325.00</u>		
	\$10,168.12		
Less Reserve for Losses	<u>853.85</u>	9,314.27	
Materials and Supplies		3,585.64	
Prepaid Expenses		<u>2,968.36</u>	\$ 75,854.64

Fixed Assets

Trucks (Armored Cars)		\$ 65,486.37	
Furniture and Fixtures		<u>18,637.28</u>	
		\$ 84,123.65	
Less Reserve for Depreciation		<u>17,316.14</u>	66,807.51

Deferred Charges

Organization Expense		\$ 69,573.26	
Installation Expense		<u>81,614.19</u>	<u>151,187.45</u>
Total Assets			<u>\$293,849.60</u>

LIABILITIES

Current Liabilities

Accounts Payable		\$ 7,342.65
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Long-Term Debt

Notes Payable		50,000.00
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Net Worth

Capital Stock	\$200,000.00	
Surplus	<u>36,506.95</u>	<u>236,506.95</u>
Total Liabilities		<u>\$293,849.60</u>

In determining the value of the stock interests of the decedent in PAPS the Commission has considered the correspondence, affidavits, photographs and other data submitted by the decedent and others, as well as the balance sheet and financial data presented, including an affidavit of the former Treasurer of this corporation as to the accuracy of such balance sheet, as set forth above.

The Commission has also considered the items of Organization Expense and Installation Expense and finds that these items enhanced the value of the corporation, a going concern, and represented a benefit to the Cuban Government at the time of taking.

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The Commission concludes that the book value, as reflected by the balance sheet, is the most appropriate basis of evaluation and finds that the net worth of PAPS on the date of loss was as follows:

Assets	\$293,849.60
Liabilities	<u>57,342.65</u>
Net Worth	\$236,506.95

The evidence includes an affidavit of Luis del Pino Tous, Executive Vice-President of PAPS, executed on June 17, 1968, disclosing that there were 3,000 shares of PAPS outstanding at the time of loss. Accordingly, each of the 3,000 outstanding shares had a value of \$78.83563 per share; and the decedent's 1,167 shares had a total value of \$92,001.18 at the time of loss on May 3, 1960.

The evidence of record indicates that PAAS was incorporated in 1957 in Cuba and was taken by the Government of Cuba in 1960. The record discloses that claimant owned 17,623 shares of stock of this company for which he assertedly paid \$1,762.30, or par value, at the time of incorporation.

Claimant has asserted a loss of \$1,762.30 on the basis of the par value of stock. While the amount invested by the decedent has some probative value, it is insufficient in and of itself to establish the value of a stock interest in PAAS on the date of loss (See Claim of Lucia W. Mendoza, Claim No. CU-3219.)

No evidence of the value of this company at the time of loss has been submitted although the Commission suggested to the decedent, prior to his demise, through counsel, that such data be submitted. It cannot be concluded that the original investment of decedent remained untouched, nor does the record give any indication of the net earnings of the company or any data from which a sound conclusion could be drawn as to its value on the asserted date of loss.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the stock interest in PAAS in that the record fails to establish that PAAS had any value on May 3, 1960, the date of loss. Accordingly, this portion of the claim is denied. (See also Claim of Harry Wassall, Claim No. CU-0243, and Claim of Arnulfo Arroyo, et al, Claim No. CU-3102.)



The Commission has decided that in certifications of loss 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 BETTIE LEE ROWE, EXECUTRIX, ESTATE OF JOHN S. ROWE, DECEASED 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 Ninety-Two Thousand One Dollar and Eighteen Cents (92,001.18) with interest thereon at 6% per annum from May 3, 1960 to the date of settlement.

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

JUL 6 1971


Lyle S. Garlock, Chairman

Theodore Jaffe, 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 or 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. 31.5(e) and (g), as amended (1970).)

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