

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20577**

**IN THE MATTER OF THE CLAIM OF**

**THE ANTONIO COMPANY OF TAMPA**

**Under the International Claims Settlement  
Act of 1949, as amended**

**Claim No. CU -2103**

**Decision No. CU- 6813**

Counsel for claimant:

William E. Henson, Jr., Esq.

**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 \$145,901.50, was presented by THE ANTONIO COMPANY OF TAMPA, and is based upon the loss of real and personal property in Cuba owned by a Cuban corporation in which claimant owned a stock interest.

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 evidence of record establishes that the claimant was organized in Florida; was previously known as The Antonio Company; and on April 1, 1966, its name of The Antonio Company was changed to THE ANTONIO COMPANY OF TAMPA. The evidence of record, including a certification of a corporate official and the birth records of the stockholders of the claimant corporation, establishes that at all times pertinent to this claim all of the outstanding shares of stock of claimant were held by nationals of the United States. The Commission finds that THE ANTONIO COMPANY OF TAMPA was a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based upon the loss of stock interests in a Cuban corporation known as El Rey del Mundo Cigar Company, doing business at 852 Padre Varela, Havana, Cuba. At the time of the asserted loss on September 15, 1960, the controlling interest in the aforesaid Cuban corporation was owned by a corporation known as Cuesta Rey & Company, which also owned the aforesaid real property located on Padre Varela, Havana, Cuba, and which has filed a separate claim therefor, CU-0755. The evidence establishes that Cuesta Rey & Company was organized in Florida, and at all times pertinent to this claim all of its outstanding shares were owned by nationals of the United States. The Commission also finds that Cuesta Rey & Company was a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes related evidence in Claim No. CU-0755, filed by Cuesta Rey & Company, affidavits, copies of El Rey del Mundo Cigar Company stock certificates and assignments of such stock interests, financial data including a balance sheet of El Rey del Mundo Cigar Company dated August 30, 1960, birth records of the stockholders of claimant and Cuesta Rey & Company, correspondence and copies of official Cuban publications.

The evidence of record establishes that the Cuban firm of El Rey del Mundo Cigar Company was intervened pursuant to Resolution 20260 of the Government of Cuba on September 15, 1960; and that this Cuban firm was later nationalized or otherwise taken on October 24, 1960, pursuant to Resolution 3, Law 851 of July 6, 1960. However, the Commission finds that the subject Cuban enterprise was effectively taken on September 15, 1960, by the Government of Cuba.

The record establishes that El Rey del Mundo Cigar Company had a total of 811 shares of stock outstanding; that 718 shares were owned by Cuesta Rey & Company and individual stockholders of Cuesta Rey & Company; that on March 1, 1961, Cuesta Rey & Company sold 576 shares of El Rey del Mundo Cigar Company stock to the claimant herein, then known as The Antonio Company; that in 1961 the individual stockholders of Cuesta Rey & Company sold 142 shares of the stock of the subject Cuban firm to claimant; and that the remaining 93 shares were held by stockholders not known to claimant but known to be residents of Cuba. Thus, Cuesta Rey & Company, and certain of its stockholders, owned 718 shares of El Rey del Mundo Cigar Company stock on the date of loss, and claimant owned 718/811 of the claim for the loss of the Cuban Company from the date of acquisition in 1961.

In connection with the 1961 transfer of the shares, the evidence of record includes Minutes of a meeting of the Board of Directors of The Antonio Company held in Tampa, Florida, on March 1, 1961, at which time the claimant's predecessor in interest adopted the following Resolution:

RESOLVED that The Antonio Company purchase from Cuesta, Rey & Company 576 shares of the capital stock of El Rey Del Mundo Cigar Company and also purchase 10 shares from the trustees of the Last Will and Testament of Angel L. Cuesta, Deceased, 2 shares from Leona D. Cuesta,

65 shares from A. L. Cuesta, Jr. and 65 shares from Karl B. Cuesta for the consideration of one half of any sums received by The Antonio Company from the Cuban Government or otherwise for the assets and stock of El Rey Del Mundo Cigar Company to be proportioned to the sellers according to their interest.

Section 507(b) of the Act provides as follows:

The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee,

The record includes an affidavit by Karl B. Cuesta, President of Cuesta Rey & Company, and of THE ANTONIO COMPANY OF TAMPA, reciting that neither Cuesta Rey & Company nor the individual stockholders who assigned their shares to THE ANTONIO COMPANY OF TAMPA, have made any recovery from any source pursuant to the 1961 assignment. The record reflects that these are family corporations of the Cuesta family.

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 claimant has submitted a balance sheet of the Cuban enterprise, El Rey del Mundo Cigar Company, dated August 30, 1960, as follows:

<u>ITEM</u>	<u>ASSETS</u>	<u>LIABILITIES</u>
Tobacco	\$ 26,592.82	
Cash & Other	31,749.93	
Bond - Spain	20,000.00	
Cash & Receivables in Spain	30,634.22	
Bond - Cuba	2,600.00	
Furniture and Fixtures	911.81	
Prepaid Expenses	68,544.49	
Accounts Receivable	50,491.77	
Capital and Reserve Funds		\$168,699.48
Cigar Inventory		39,345.79
Exchange Liability		10,423.04
Commercial Liabilities		12,844.59
Other Liabilities		<u>212.14</u>
	\$231,525.04	\$231,525.04

The Commission must determine the net worth of the Cuban corporation, not merely its Cuban assets, when arriving at the extent of the losses of the claimant. The Commission finds that the balance sheet represents the most appropriate basis for an evaluation of such net worth, commensurate with the stock interest held by claimant herein.

An examination of the balance sheet and other evidence of record submitted by claimant establishes that the following items are included as a part of the assets and liabilities of the Cuban enterprise:

Cash and receivables from Spain	\$30,634.22
Bond in Spain	20,000.00
Accounts receivable \$50,491.77	22,797.98
Commercial liabilities	12,844.59
Other liabilities	<u>212.14</u>

Total	\$86,488.93
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However, the balance sheet and other evidence of record discloses that of the assets listed, the sums of \$20,000.00 and \$30,634.22, or a total of \$50,634.22, represented obligations of Spanish debtors, cash and a bond in Spain. There is no evidence of record that Cuba took these assets. Additionally, of the \$50,491.77 Accounts Receivable, the sum of \$22,797.98 were obligations of the claimant and Cuesta Rey & Company, nationals of the United States, which could not be the subject of a taking in Cuba. Accordingly the assets are reduced to \$158,092.84.

Moreover, inquiry discloses that \$39,345.79, listed by the claimant as "Cigar Inventory" represents an offset account considered by the firm to be a liability. This, together with other liabilities of \$13,056.73, results in a figure of \$52,402.52 to be deducted from the assets, leaving a net worth of \$105,690.32. Accordingly, since there were 811 shares outstanding of this firm at times pertinent to this claim, the Commission finds that a share of stock in this enterprise had a value of \$130.3209 at the time of loss.

The Commission concludes that claimant herein, as the owner of 718 shares of stock of the aforesaid Cuban enterprise, succeeded to and suffered a loss in the total amount of \$93,570.41 within the meaning of Title V of the Act as a result of the intervention of the Cuban firm, El Rey del Mundo Cigar Company, by the Government of Cuba on September 15, 1960.


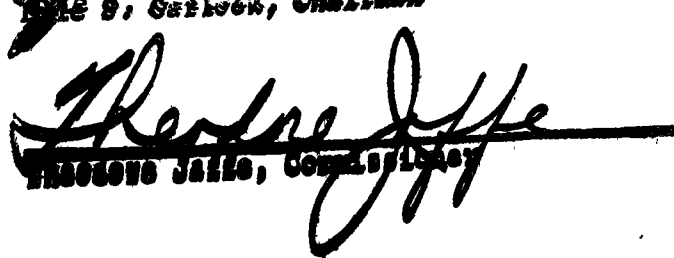
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that THE ANTONIO COMPANY OF TAMPA 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-three Thousand Five Hundred Seventy Dollars and Forty-one Cents (\$93,570.41) with interest at 6% per annum from September 15, 1960 to the date of settlement.

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

SEP 15 1971

  
Paul H. 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. 531.5(e) and (g), as amended (1970).)