

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

IN THE MATTER OF THE CLAIM OF

MOLLER & ROTHE, INC.  
and MOLLER & ROTHE  
(EXPORT) CORPORATION

Claim No. CU -2513

Claim No. CU-2514

Decision No. CU- 3494

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Steckler, Frank & Gutman

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by MOLLER & ROTHE, INC. and MOLLER & ROTHE (EXPORT) CORPORATION, in the amounts of \$21,828.43 and \$187,689.18, respectively, and are based upon the asserted loss of payment for merchandise or materials shipped to various customers in Cuba.

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.

Officers of the claimant corporations have certified that the claimants were organized under the laws of the State of New York and that at all times pertinent to these claims the claimant, ROTHE & MOLLER, INC., owned all of the outstanding shares of stock of all classes issued by MOLLER & ROTHE (EXPORT) CORPORATION; and that on the respective dates of loss, discussed hereinafter, Niels A. Moller, a citizen of Denmark, owned 27.273 per cent of the outstanding stock of all classes of ROTHE & MOLLER, INC., and the remaining 72.727 per cent of such stock was owned by Tyge E. Rothe, a national of the United States since 1943. Further, the aforesaid officials stated that on April 1, 1964, pursuant to an Agreement between Niels A. Moller and MOLLER & ROTHE, INC., all shares held by Niels A. Moller were transferred to the treasury of the corporation and on dates of filing these claims 100 per cent of all shares were registered to and wholly owned by Tyge E. Rothe. Thus, the Commission concludes that claimants herein are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes extensive correspondence, with evidence pertaining to and recapitulations of the losses, subject of the claims, which were submitted by officers of the claimant corporations to the United States State Department. The record includes copies of correspondence to and from local and Cuban banks, the consignees and the claimants concerning the payment or non-payment for the merchandise or materials shipped by the claimants. The claimants have submitted recapitulations of the transactions involved in these claims, affidavits, data on the invoices covering the items included in these claims, ledger entries concerning such accounts receivable, and other material to establish the shipment of merchandise or materials to Cuban consignees and the consequent indebtedness arising from such transactions.

The evidence discloses that the various purchase prices of the materials or merchandise, as well as accompanying charges for such shipments, were paid in many instances by the consignees to the local Cuban banks for dollar reimbursement to the claimants but that dollar reimbursement releases or authorization for such reimbursement were never granted by Cuban governmental officials. Other shipments made by claimants on an open account basis were not paid to claimants or collecting banks by the consignees. Claimants stated that in 1958 many shipments were made on an open account basis but in 1959-1960 most of the shipments were made by sight drafts. Claimants state, however, that in all instances discussed herein the claimants have not received any of the funds for the shipments, enumerated hereinafter.

There follows an enumeration of the shipments made by claimants to the Cuban consignees, including information on the open accounts and the locally paid drafts. The items listed hereafter include such data as name of the consignee, date and number of draft, if any, invoice numbers, date of invoices, bank numbers and amount due and payable by the consignee. The locally paid draft items will include the dates that payment was made locally to Cuban banks.

I. MOLLER & ROTHE, INC.

1. Open Account Items:

<u>Consignee</u>	<u>Date</u>	<u>Invoice Number</u>	<u>Invoice Amount</u>	<u>Amount</u>
Ediciones y Papeleria Selecta, S.A.	6/24/60	2729	\$ 1,348.36	
		Less Credits:	<u>1,265.94</u>	\$ 82.42
Sres. Gimeno y Cia.	2/ 5/57	2700	\$ 1,763.74	
	2/ 5/57	2700	1,763.74	
	2/18/57	2700	1,747.50	
	2/18/57	2700	<u>1,747.51</u>	
			7,022.49	
		Less Credits:	<u>473.04</u>	6,549.45
Cia. Paperla Amistad, S.A. 1958-59		858	Various	
		859	(Credits)	
	2/29/60 -	Acct. Receivable Ledger Entry	<u>11,488.75</u>	<u>11,488.75</u> <sup>1/</sup>
T O T A L . . . . .				<u>\$18,120.62</u>

<sup>1/</sup>. Various charges and credits entered on account receivable ledger but the balance due claimant on February 29, 1960, was \$11,488.75.

2. Locally Paid Draft

<u>Consignee</u>	<u>Invoice</u>	<u>New York Bank No.</u>	<u>Amount</u>	<u>Paid Locally</u>
Papelera Regla, S.A.	2055	768685	\$4,703.97	October 14, 1959

Credits Allowed: 996.16

T O T A L . . . \$3,707.81

II. MOLLER & ROTHE (EXPORT) CORPORATION

1. Open Account Items:

<u>Consignee</u>	<u>Date</u>	<u>Invoice Number</u>	<u>Invoice Amount</u>	<u>Amount</u>
Sres. Cardenas y Cia.	10/3 /59	4747	<u>\$ 1,098.68</u>	\$ 1,098.68
Sres. Cinegrafico	12/1 /58	4028	1,048.31	2,096.61
	12/1 /58	4028	<u>1,048.30</u>	
Sres. Muniz Hnos. & Cia.	4/29/59	3917	<u>521.82</u>	521.82
Cia. Papelera Amaury, S. A.	12/16/58	4086	1,304.38	
	12/16/58	4086	1,304.38	
	12/8 /58	4085	607.57	
	10/31/58	3962	915.40	
	10/31/58	3962	915.40	
	2/20/58	3505	940.62	
	2/20/58	3505	940.62	
	2/20/58	3505	940.61	
	2/11/58	3546	407.14	
	1/28/58	3504	1,308.31	
	1/28/58	3504	<u>1,308.31</u>	
			<u>10,892.74</u>	

Less: Credits (Including  
\$2,100. transferred to  
Papelera Jorge, S. A.)

2,789.72      8,103.02

Cia. Papelera Amistad, S. A.	12/18/58	3882	4,526.47	
	12/3 /58	3935	4,656.33	
	11/30/58	4048	2,611.76	
	11/24/58	4056	4,733.77	
	11/7 /58	4100	6,237.87	
	11/6 /58	3799	6,659.00	
	11/5 /58	4058	758.96	
	11/4 /58	3938	1,157.26	
	11/1 /58	3884	1,545.60	
	10/29/58	4047	1,943.71	
	10/29/58	4045	854.85	
	10/17/58	3942	4,508.85	
	10/10/58	3988	3,821.20	
	10/6 /58	3941	1,254.34	
	10/3 /58	3935	2,972.22	
9/30/58	3849	4,788.73		
9/29/58	3886	1,347.18		
9/15/58	3878	2,827.29		

<u>Consignee</u>	<u>Date</u>	<u>Invoice Number</u>	<u>Invoice Amount</u>	<u>Amount</u>
	9/10/58	3883	\$ 5,283.04	\$
	9/2 /58	3939	1,777.16	
	8/29/58	3885	1,073.05	
	8/19/58	3800	1,661.58	
	8/18/58	3928	1,359.28	
	8/15/58	3886	1,198.64	
	8/13/58	3248	1,477.56	
			<u>71,035.70</u>	
	Less Credits		<u>1,666.99</u>	69,368.71
Papelera Jorge, S. A.	4/10/59	4298	915.07	
	4/10/59	4298	915.08	
	4/2 /59	4297	1,622.31	
	4/2 /59	4297	1,622.31	
	3/23/59	4305	4,536.28	
	Transferred from Cia. Papelera Amaury, S. A.		<u>2,100.00</u>	
			11,711.05	
	Less: Credits		<u>525.00</u>	\$11,186.05
Papelera Regla, S. A.	2/2 /59	4261	<u>4,272.05</u>	4,272.05
Sr. Rodolfo Schneer Collin	1/31/58	3327	130.79	
	1/31/58	3327	130.79	
	1/31/58	3327	130.79	
	1/31/58	3327	<u>130.79</u>	<u>523.16</u>
T O T A L . . . . .				<u>\$97,170.10</u>

2. Locally Paid Drafts

<u>Consignee</u>	<u>Invoice</u>	<u>New York Bank No.</u>	<u>Amount</u>	<u>Paid Locally</u>
Editorial Cenit, S.A.	4947	152630	\$ 2,979.72	Sept. 12, 1959
	4947A	152631	2,979.72	Sept. 12, 1959
Impresora Ariel, S.A.	4735	776516	3,792.24	Nov. 27, 1959
Papelera Trebus, S.A	4830A	777602	694.13	Jan. 21, 1960
Papelera Amistad, S.A.	4709	778201	3,471.75	July 6, 1960
	4046	777523	2,317.71	July 6, 1960
	4051	777506	3,378.75	July 6, 1960
	4896	777776	594.19	Mar. 14, 1960
	3880	89552	4,975.13	Feb. 4, 1960
	4044	90087	6,675.99	Feb. 4, 1960
	4188	92754	763.27	Feb. 4, 1960
	3881	93376	4,992.19	Feb. 4, 1960
	4040	94015	4,128.59	Feb. 4, 1960
	4043	112212	2,789.35	Feb. 4, 1960
	4049	119243	4,585.07	July 6, 1960
	4345	116279	7,126.22	July 6, 1960
	4707	119476	5,331.14	July 6, 1960
	4892	119564	2,473.00	July 6, 1960
	4338	112869	5,234.38	Mar. 11, 1960
	4312	109238	5,340.57	Aug. 4, 1960

<u>Consignee</u>	<u>Invoice</u>	<u>New York Bank No.</u>	<u>Amount</u>	<u>Paid Locally</u>
Papelera Merit	2826	81201	\$ 962.50	Dec. 28, 1959
	2828	82712	988.28	Jan. 12, 1960
	3170	45623	1,452.57	July 14, 1960
Papelera Jorge	4958	126525	4,021.39	Jan. 19, 1960
	4011	79987	1,343.56	Apr. 1, 1960
Papelera Regla	4011A	79988	1,343.57	Feb. 29, 1960
	4306	95382	2,651.78	Feb. 26, 1960
	4306A	95383	2,651.77	July 1, 1960
	4943A	116534	480.55	May 25, 1960
J. J. Saldise				
T O T A L . . . .			<u>\$90,519.08</u>	

RECAPITULATION OF LOSSES

I. MOLLER & ROTHE, INC.

Open Accounts	\$ 18,120.62
Locally Paid Draft	<u>3,707.81</u>
T O T A L . . . . .	<u>\$ 21,828.43</u>

II. MOLLER & ROTHE (EXPORT) CORPORATION

Open Accounts	\$ 97,170.10
Locally Paid Drafts	<u>90,519.08</u>
T O T A L . . . . .	<u>\$187,689.18</u>

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 claimants herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimants, 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, 1967 FCSC Ann. Rep. 46.)

The Commission finds that the property of claimants was lost as a result of intervention by the Government of Cuba and that, in the absence

of evidence to the contrary, the losses occurred the day after the dates that the drafts were paid locally, or, thirty (30) days after the dates of invoice of the open accounts. However, for those losses arising prior to the effective date of Law 568 the Commission finds that these losses arose on the date of publication of this law, or on September 29, 1959.

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 respective dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of losses sustained by claimants arising from shipments of goods to the Cuban consignees shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred to the date on which provisions are made for the settlement thereof, more particularly as follows:

I. ROTHE & MOLLER, INC.

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 6,549.45
October 15, 1959	3,707.81
February 29, 1960	11,488.75
July 24, 1960	<u>82.42</u>
T O T A L . . . . .	<u>\$ 21,828.43</u>

II. ROTHE & MOLLER (EXPORT) CORPORATION

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$102,030.86
November 3, 1959	1,098.68
November 28, 1959	3,792.24
December 29, 1959	962.50
January 13, 1960	988.28
January 20, 1960	4,021.39
January 22, 1960	694.13
February 5, 1960	24,324.52
February 27, 1960	2,651.78
March 1, 1960	1,343.57
March 12, 1960	5,234.38
March 15, 1960	594.19
April 2, 1960	1,343.56
May 26, 1960	480.55
July 2, 1960	2,651.77
July 7, 1960	28,683.64
July 15, 1960	1,452.57
August 5, 1960	<u>5,340.57</u>
T O T A L . . . . .	<u>\$187,689.18</u>

CERTIFICATION OF LOSSES

The Commission certifies that MOLLER & ROTHE, 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-One Thousand Eight Hundred Twenty-Eight Dollars and Forty-Three Cents (\$21,828.43) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

the Commission certifies that MOLLER & ROTHE (EXPORT) CORPORATION 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 One Hundred Eighty-Seven Thousand Six Hundred Eighty-Nine Dollars and Eighteen Cents (\$187,689.18) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

FEB 5 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 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)