

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

IN THE MATTER OF THE CLAIM OF

TYGE E. ROTHE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2607

Decision No. CU 3971

Counsel for claimant:

Steckler, Frank & Gutman

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 TYGE E. ROTHE in the amount of \$61,619.25 based upon the loss of his ownership interest in the Cuban enterprise known as Compania Papelera Amistad, S.A. Claimant has been a national of the United States since his naturalization on December 16, 1943.

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.

On the basis of the evidence of record, the Commission finds that TYGE E. ROTHE is, and since prior to September 29, 1961, has been the owner of three-fourths of the total outstanding shares of stock of Compania Papelera Amistad, S.A., while the remaining one-fourth interest is owned by a Cuban national.

Evidence available to the Commission discloses that Compania Papelera Amistad, S.A. was nationalized pursuant to Resolution No. 454 on September 29, 1961. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" 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. Accordingly, claimant TYGE E. ROTHE is entitled to file this claim based upon his ownership interest in that Cuban enterprise. (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.

Claimant has submitted a balance sheet for Compania Papelera Amistad, S.A., dated May 31, 1951, containing figures which are said to be the last figures taken from the books, originally set up by a Certified Public Accountant and maintained under accepted accounting practices. The statement reflects the following:

A S S E T S

CURRENT ASSETS:

Cash on hand and banks	\$ 1,105.78
Accounts Receivable	613.62
Accounts Receivable customers, less Reserve	74,821.56
Accounts Receivable other	458.60
Merchandise in Transit	1,088.65
Inventory - cost	<u>171,749.89</u>
Total Current Assets	\$ 249,838.10

Machinery taken to cover Accounts Receivable	4,142.90
Accounts Receivable and Overdue	4,403.50
Accounts Receivable Executives and Employees	22,354.82
Machinery and Equipment, less: depreciation	41,033.24
Deferred Charges	<u>5,044.62</u>
Total Assets	<u>\$ 326,817.18</u>

L I A B I L I T I E S

CURRENT LIABILITIES:

Overdrafts in Banks	\$ 3,639.73
Banks Loans Payable	18,000.00
Other Loans Payable	3,000.00
Consolidated Accounts Payable	203,572.10
Taxes Payable	374.10
Reserves	<u>11,678.75</u>
Total Current Liabilities	\$ 240,264.68

Deferred Accounts Receivable	4,775.41
Account Receivable discounted and overdue	4,403.50

CAPITAL:

Authorized: 1,000 Nominal Shares at \$100.00 nominal value each; issued and in circulation 680	68,000.00
Reserves for Legal Purposes	10,087.43
Superavit or (Deficit)	<u>(713.84)</u>

Total Liabilities & Capital	<u>\$ 326,817.18</u>
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In further support of the asserted losses, claimant has submitted correspondence and prior balance sheets concerning the subject Cuban business enterprise; and has submitted his own affidavit as well as the affidavit of his Cuban attorney, who was the holder, as nominee, of stock in the subject enterprise.

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 May 1959 balance sheet are the most appropriate basis of valuation.

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

Total Assets (less accounts receivable and overdue)	\$ 326,817.18
Less Liabilities	<u>249,443.59</u>
Net Worth	\$ 77,373.59

Accordingly, the Commission finds that claimant, as holder of three-fourths of the outstanding shares of stock of Compania Papelera Amistad, S.A., suffered a loss as a result of the taking of this business enterprise by the Government of Cuba, in the amount of \$58,030.20, within the meaning of Title V of the Act.

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 TYGE E. ROTHE 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 Fifty-eight Thousand Thirty Dollars and Twenty Cents (\$58,030.20), with interest at 6% per annum from September 29, 1961, to the date of settlement.

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

OCT 1 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).)