

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

IN THE MATTER OF THE CLAIM OF

J. A. DOUGHERTY'S SONS, INC.,
DISTILLERS

Claim No. **CU** -3100

Decision No. **CU** **3830**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Gerald A. Tallman, 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 \$3,007,510.00, was presented by J. A. DOUGHERTY'S SONS, INC., DISTILLERS, based upon asserted losses of certain real and personal property 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.

The record shows that claimant was organized under the laws of Delaware, and that as of July 31, 1963, its former name, The North American Trading and Importing Corporation, was changed to its present one. An authorized officer of claimant has certified that at all pertinent times 100% of claimant's outstanding capital stock was owned by Publicker Industries, Inc., a corporation organized under the laws of Pennsylvania. An authorized officer of the parent corporation has certified under date of April 16, 1969 that not less than 99.1% of the parent's outstanding capital stock is owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It further appears from the record that claimant maintained a branch in Cuba where it was engaged in forwarding Cuban sugar cane molasses. In connection with these activities, claimant owned certain real and personal property in Cuba.

On January 29, 1963, the Cuban Government published in its Official Gazette Resolution 4, pursuant to Law 851, which listed as nationalized the North American Trading and Importing Corporation. The Commission, therefore, finds that claimant's real and personal property in Cuba were nationalized on January 29, 1963, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

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.

Claimant has computed its claim as follows:

Land in Cienfuegos		\$ 75,000.00
Office building in Cienfuegos		16,700.00
Maritime facilities and improvements at Cienfuegos		1,000,000.00
Machinery and equipment at:		
Cienfuegos		1,611,200.00
Regla		190,700.00
Antilla		5,000.00
Nuevitas		5,000.00
Furniture and fixtures at:		
Havana		15,000.00
Cienfuegos		3,500.00
Nuevitas		1,800.00
Antilla		1,400.00
Regla		1,200.00
Debts owed by nationalized enterprises or the Cuban Government:		
Cuban Sugar Ministry		28,295.00
Cuba Railroad Company (net)		2,491.00
Prepaid rent		380.00
Prepaid taxes		55.00
Less payables:		
Retirement fund	\$ 525.00	
Union dues	29.00	(554.00)
Bank deposits - Havana	46,304.00	
Bank deposits - Cienfuegos	1,916.00	48,220.00
Petty Cash:		
Havana office	200.00	
Cienfuegos office	100.00	
Antilla office	300.00	
Nuevitas office	1,000.00	1,600.00
Prepaid insurance		123.00
Advances to employees		400.00
Total		\$3,007,510.00

The evidence includes, with respect to claimant's Cuban branch, copies of the following documents: adjusted trial balance sheets as of December 31, 1960 and December 31, 1961; a general trial balance sheet for the year 1961; a trial balance sheet as of October 31, 1962; a profit and loss statement for the year 1961; extracts from an insurance policy covering claimant's real and personal properties in Cienfuegos, Regla, Antilla and Pastelillo (Nuevitas) for the period ending January 1, 1961; extracts from an insurance policy covering claimant's 161 steel tank cars for the period ending March 27, 1961; extracts from an insurance policy covering claimant's office furniture, fixtures, equipment, stationary, etc. at claimant's Havana office for the period ending April 7, 1961; and an extract from claimant's records showing a credit balance in a Cuban bank as of January 30, 1963. In addition, the record contains photographs of the properties, letters from two American concerns, dated October 27, 1967, indicating the then current replacement cost for new tank cars, and statements from officials of claimant concerning this claim.

The trial balance sheet as of October 31, 1962 shows the following, the Cuban peso being on a par with the United States dollar:

	<u>DR.</u>	<u>CR.</u>
Cuban National Bank, Agency		
4-10-05 - Havana	\$ 50,890.22	
Cuban National Bank, Agency		
12-07-01 - Cienfuegos	956.91	
Petty Cash - Havana	200.00	
Petty Cash - Cienfuegos	100.00	
Petty Cash - Antilla	300.00	
Petty Cash - Nuevitas	1,000.00	
Accounts collectable - ICEA's Fees	29,502.17	
Claims to collect - 10% Freight		
on Tank-cars	23,020.11	
Real Estate Cienfuegos	36,214.00	
Machinery & Equipment -		
Cienfuegos	23,500.00	
Furniture and Office		
Equipment - Cienfuegos	1,096.20	
Furniture and Office		
Equipment - Havana	11,924.20	
Advance Payment - Taxes	37.12	
Advance Payment - Vacations	400.00	
Advance Payments - General	20.00	
Advance Payment - Leases	380.00	
Advance Payment - Insurances		\$ 181.30

An examination of the evidence of record indicated that certain elements of the claim required some clarification. Those matters were brought to the attention of claimant and explanations were requested. The Commission also suggested the submission of information and evidence in support of the estimated values of the following claimed items of property: \$75,000.00 for land and \$16,700.00 for structures and certain supplies in Cienfuegos, which items appear as "Real Estate Cienfuegos" in the aggregate amount of \$36,214.00 in the balance sheets as of October 31, 1962, December 31, 1961 and December 31, 1960; \$1,000,000.00 for certain marine facilities, such as docks, bulkheads, buoys and related docking property, which do not appear under that account name or any similar account name in any of the balance sheets of record, and it is noted that there is no item in any of the said balance sheets that even approaches \$1,000,000.00; machinery and equipment in the aggregate amount of \$1,811,900.00, located at four different areas in Cuba, including \$1,611,200.00 for 161 steel tank cars, whereas the balance sheet as of October 31, 1962 shows machinery and equipment at Cienfuegos only in the amount of \$23,500.00 less depreciation of \$15,456.00, or a net book value of \$8,044.00, and the 1961 financial statements indicate that the tank cars "are totally depreciated"; and furniture and fixtures at five locations, valued at \$22,900.00, whereas the October 31, 1962 balance sheet shows furniture and fixtures at Cienfuegos and Havana only in the aggregate amount of \$13,020.40 less depreciation of \$10,036.00, or a net book value of \$2,984.40. Claimant was also asked to show the amount its Cuban branch owed the Government of Cuba for taxes or otherwise on the date of loss.

When no response was received after a reasonable period of time, a "follow-up" letter was forwarded to claimant, but to date no response or other communication has been received. It thus appears that the claimant has asserted losses in amounts that are not supported by the evidence of record. Obviously mere unsubstantiated estimates, as in this case, are insufficient to justify the asserted values. While the Commission recognizes

that certain properties have increased in value over the years, it must nevertheless have a sound foundation for determining the extent of such increases.

It appears that claimant has estimated the value of its 161 tank cars on the basis of the 1967 replacement costs as set forth in the said letters from the two American concerns. The Commission finds that the replacement costs in 1967 are not appropriate to determine value here.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant in this case are those shown in the insurance policies; and that with respect to other properties not covered by such insurance policies, namely, cash, receivables and prepaid items, the Commission finds that the values therefor shown in the balance sheet as of October 31, 1962, as adjusted below, are most appropriate and equitable.

The specific land asset is not included under the insurance policies and is not shown separately in the balance sheet as of October 31, 1962 or any of the other balance sheets or any other evidence of record. As noted above, the financial statements merely set forth real property in Cienfuegos in the amount of \$36,214.00.

It appears from claimant's statements that it acquired the real property in Cienfuegos on February 21, 1925, February 28, 1925, April 12, 1928 and March 20, 1957, at costs of \$25,000.00, \$6,000.00, \$3,500.00 and \$2,000.00, respectively, aggregating \$36,500.00. (See claimant's Exhibit III under the heading "Real Estate - Land Cienfuegos.") However, although claimant has described the real property as 15 lots of land, 20 lots of underwater land, and various buildings, there is nothing in the record to show whether the buildings were included in the purchase price of \$36,500.00, and if not, when the structures were erected and what the costs of building the structures were. Moreover, there is no evidence to support claimant's assertions that the land had a value of \$75,000.00, and that the buildings and fixtures had a value of \$16,700.00.

Trip Expenses advanced	250.00	
Vouchers due		97,708.07
Accounts payable - Accumulated		1,384.66
Personal Income Tax (withheld)		40.85
Voluntary Syndical quota		25.88
Prior Years' Taxes Reserve		1,347.69
Machinery & Equipment Depreciation Reserve - Cienfuegos		15,456.00
Furniture & Office Equipment Depreciation Reserve - Cienfuegos		746.69
Furniture & Office Equipment Depreciation Reserve - Havana		9,290.14
Capital		419,000.00
Surplus		157,283.01
The North American Trading & Import Co.		3,115.32
Inter-Companies Account	544,594.51	
Molasses handling - Wages	9,387.23	
Administration Salaries	5,954.00	
Plants & Offices Personnel Salaries	45,643.98	
General Expenses	2,347.53	
Merchandise & Office Expenses	516.74	
Maintainment of Plants - Merchandise	90.56	
Maintainment of Plants - Wages	242.64	
Maintainment of Machinery & Equipment - Merchandise	781.71	
Maintainment of Machinery & Equipment - Wages	319.73	
Depreciation	2,865.30	
Insurance Costs	2,047.97	
Plants & Offices - Leases	11,200.00	
Municipal Taxes	217.99	
Fuel	94.27	
Power and Light	1,165.93	
Water	126.35	
Social Security Tax Payments, Law 998	6,685.47	
Watchman's Expenses	3,742.53	
Telephone & Telegraph	3,445.26	
Sample analyses costs		16.29
Empty Tank-cars freight	6.08	
Repairing of Tank-cars	3,185.78	
Revenue Stamps	3.00	
Trip Expenses	3,610.55	
Other General Income		75.00
Reimbursement of Tank-cars freight		20,384.51
General Taxation	6,064.79	
Representation Expenses	190.00	
Insurance and Bonding of Personnel expenses	166.70	
Personnel Group Insurance	321.05	
Insurance Expenses - General	60.60	
Post Office Stamps	367.71	
Legal Expenses	750.00	
ICEA's Fees - Handling of Molasses		109,989.81
Interests on indebtedness to be paid	58.33	
	<u>\$836,045.22</u>	<u>\$836,045.22</u>

Although claimant has failed to respond to inquiries concerning said real property, inter alia the Commission holds that for the purpose of this decision the land of Cienfuegos had the value shown on the trial balance sheet, namely \$36,314.00, at the time of loss.

The Commission finds that the losses sustained by claimant on January 29, 1963 within the meaning of Title V of the Act were as follows:

1. Land \$36,214.00

2. Insurance policy covering claimant and all its affiliated and subsidiary companies "on their interest as agents, bailees, custodians, lessees, lessors, operators and/or owners on property consisting principally of all buildings, tanks, and other structures, pipe racks, and wharfs, including all piping and pipe lines, and on all contents of the above buildings and/or structures, whether required to be specifically named or not, and all other property appertaining to or used in their business all only whilst situate on or about premises owned, leased, used or occupied by the assured at the following locations in the Republic of Cuba:"

Cienfuegos	\$462,000.00
Regla, Havana	173,250.00
Antilla	4,620.00
Pastelillo	4,850.00
Total	<u>\$644,720.00</u>

3. Insurance policy covering the following property of claimant in Cuba:

61 Steel tank cars, 5950 gallons capacity at \$2,500.00 each	\$152,500.00
100 Steel tank cars, 8000 to 8153 gallons capacity at \$3,500.00 each	<u>350,000.00</u>
	<u>\$502,500.00</u>

CU-3100

4. Insurance policy "on furniture, fixtures, office equipment and stationary and all other contents property of the insured and situated in their office No. 1006/11 on the tenth floor of the building located at No. 258 Habana Street, block completed by Empedrado, San Juan de Dios and Compostela Streets in this City of Havana."

Amount of policy	<u>\$12,500.00</u>
------------------	--------------------

- | | |
|---|-------------|
| 5. Bank deposits - Havana (established by a copy of a bank statement, dated January 29, 1963) | \$46,304.00 |
| Bank deposits - Cienfuegos (balance sheet as of October 31, 1962) | 956.91 |

Petty Cash:

(balance sheet as of October 31, 1962)

Havana office	\$ 200.00	
Cienfuegos office	100.00	
Antilla office	300.00	
Nuevitas office	<u>1,000.00</u>	<u>1,600.00</u>
		<u>\$48,860.91</u>

6. Receivables:

(balance sheet as of October 31, 1962)

Fees	\$29,502.17	
Freight charges	<u>23,020.11</u>	<u>52,522.28</u>

7. Prepaid items:

(balance sheet as of October 31, 1962)

Taxes	37.12	
Vacations	400.00	
General	20.00	
Rent (leases)	380.00	
Trip expenses	<u>250.00</u>	<u>1,087.12</u>

Recapitulation

Accordingly, the aggregate value of the properties taken by Cuba was as follows:

Real and personal property	\$ 680,934.00
161 tank cars	502,500.00
Furniture & fixtures (Havana office)	12,500.00
Cash on hand and in banks	48,860.91
Receivables	52,522.28
Prepaid items	<u>1,087.12</u>
	<u>\$1,298,404.31</u>

The Commission has held consistently that with respect to a Cuban branch, as opposed to a Cuban entity, a corporate claimant's loss should not be reduced by any of the branch liabilities, except for taxes owing to the Government of Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the parent is or may be liable for the debts of the Cuban branch.

The balance sheet as of October 31, 1962 shows that claimant was indebted to Cuba for personal income taxes withheld in the amount of \$40.85. It is therefore concluded that the aggregate loss sustained by claimant on January 29, 1963 was \$1,298,363.46.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that J. A. DOUGHERTY'S SONS, INC., DISTILLERS 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 Million Two Hundred Ninety-Eight Thousand Three Hundred Sixty-Three Dollars and Forty-Six Cents (\$1,298,363.46) with interest at 6% per annum from January 29, 1963 to the date of settlement.

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

AUG 27 1969

Edward v. B. Sutton
Edward 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).)