

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

IN THE MATTER OF THE CLAIM OF

● STEVENS & THOMPSON PAPER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1542

Decision No. CU -2059

AMENDED FINAL DECISION

By its Proposed Decision issued July 3, 1968, the Commission found that claimant was the owner of 5,318 shares of the preferred stock of The Bohon Trading Corporation (Cia. Comercial Bohon, S.A.), that each share of said preferred stock had a value of \$96.64 and certified a loss in the amount of \$513,931.52. No objections were entered and the Commission's Decision became Final on February 25, 1970.

The Commission has reconsidered this matter in the Claim of Robert B. Stevens (Claim No. CU-1898) and in its Final Decision thereon has found that the preferred stock of Bohon, including accrued dividends, had a value of \$119.5457 per share.

Accordingly, the Certification of Loss in the Decision in this claim is set aside, the following Certification of Loss will be entered and in all other respects the Final Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that STEVENS & THOMPSON PAPER COMPANY 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 Six Hundred Thirty-Five Thousand Seven Hundred Forty-Four Dollars and Three Cents (\$635,744.03) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

MAR 3 1971


Louis S. Garlock, Chairman


Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

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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 STEVENS & THOMPSON PAPER COMPANY, and is based upon the asserted loss of \$531,800.00, sustained in connection with the ownership of a stock interest in Compania Comercial Bohon, S. A. (The Bohon Trading Corporation).

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.

An officer of STEVENS & THOMPSON PAPER COMPANY has certified that claimant is a New York corporation and that at all times pertinent to this claim, all of the stock of STEVENS & THOMPSON PAPER COMPANY has been 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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been, the owner of 5,318 shares of 7% Series "B" Preferred Stock of The Bohon Trading Corporation, a company organized under the laws of Cuba and not qualified to file claim within the meaning of Section 502(1)(B) supra. The certificates representing the shares in question are Nos. 1 through 9, inclusive.

On October 13, 1960, the Government of Cuba published Law 890 in its Official Gazette, which listed as nationalized Cia. Comercial Bohon, S. A. Accordingly, the Commission finds that The Bohon Trading Corporation was nationalized by the Government of Cuba on October 13, 1960.

The Commission concludes that as a result of the nationalization by the Government of Cuba of The Bohon Trading Corporation, claimant suffered 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.

In determining the value of the interest owned by claimant in The Bohon Trading Corporation, the Commission has considered balance sheets for June 30, 1959 and August 31, 1960, submitted by claimant.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity or the net worth of the Company. The record indicates that The Bohon Trading Corporation authorized 15,000 shares of stock, of which 5,000 shares of common stock were classified as "Series A", and 10,000 shares of preferred stock were classified as "Series B". At the time of nationalization, there were outstanding 792 shares of Series A, and 5,372 shares of Series B.

The balance sheet of The Bohon Trading Corporation as of August 31, 1960 is as follows:

A S S E T S

Current Assets:

Cash on Hand	\$	100.00	
The National City Bank-Special Deposit		2,552.50	
Accounts Receivable-Customers		25,926.40	
Accrued Interest Receivable		213.75	
Other Accounts Receivable		17,193.74	
Inventories-At Average Cost:			
Raw Materials and Supplies	\$	114,163.96	
Work in Process		2,745.47	
Finished Products		5,003.04	<u>121,192.47</u>

Total Current Assets \$167,898.86

Investments:

Stock of Compania Inmobiliaria Bomaste, S. A.			34,000.00
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Cash Surrender Value of Insurance on Life of Officer

	\$	8,106.24	
Less: Loan Received		<u>4,368.75</u>	3,737.49

Fixed Assets:

Machinery and Equipment	\$	544,366.66	
Furniture and Fixtures		3,890.52	
Transport Equipment		3,627.84	
Miscellaneous Equipment		<u>2,090.12</u>	

\$553,097.14
Less: Reserve for Depreciation 75,945.69 478,029.45

Trade Mark, at Cost Less Amortization 887.74

Deferred Charges:

Organization Expenses, less Amortization	\$	10,372.67	
Deferred Expenses, less Amortization		24,976.35	
Prepaid Insurance		7,627.56	
Prepaid Advertising		<u>2,635.33</u>	45,611.91

Other Assets:

Deposits			<u>39,329.35</u>
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TOTAL ASSETS \$769,494.80

L I A B I L I T I E S

Current Liabilities:

Banco Nunez			
Bank Overdraft	\$ 10,276.17		
Loan Payable	40,000.00		
Loan on Raw Materials and Supplies	<u>25,000.00</u>	\$ 75,276.17	
Accounts Payable:			
Trade		109,882.48	
Accruals:			
Taxes	\$ 5,283.14		
Commissions on Sales	4,662.43		
Paid Vacations	<u>4,616.70</u>	<u>14,562.27</u>	
Total Current Liabilities			\$199,720.92

The Bohon Company Incorporated

15,276.95

Total Liabilities

\$214,997.87

Capital:

Preferred Stock:

Authorized 10,000 Shares of \$100.00
Nominal Value Each \$1,000,000.00

Issued and Outstanding \$537,200.00

Common Stock:

Authorized 5,000 Shares of \$100.00
Nominal Value Each \$ 500,000.00

Issued and Outstanding 79,200.00

\$616,400.00

Deficit:

Balance January 1, 1960 \$(60,676.20)

Add:

Tax on Profit, six months ended December 31, 1959 5,892.26 \$ (66,568.46)

Add: Profit for eight months ended August 31, 1960

4,665.39 (61,903.07) 554,496.93

\$769,494.80

The Commission has reviewed the balance sheet submitted, and finds that although deferred expenses and organization expenses, totaling \$35,349.02, are listed as assets of The Bohon Trading Corporation they are, nevertheless, expenses previously incurred, and should not be considered as assets in arriving at the net worth of that enterprise. Thus, the asset total is found to be \$734,145.78. The deduction from this figure of liabilities totaling \$214,997.87 results in a net worth of \$519,147.91.

On the basis of all the evidence of record, the Commission finds that \$519,147.91 is the amount that would have been available for distribution among the stockholders of The Bohon Trading Corporation if the company had been liquidated voluntarily.

The value of the interest owned by claimant in The Bohon Trading Corporation is governed by ARTICLE 12 of the By-Laws of the corporation pertaining to the distribution of corporation assets resulting from winding-up operations.

ARTICLE 12 provides that:

The common stock shall be entitled to the participation in the corporate assets thereby represented, after deducting the par value of the preferred stock, and shall also be entitled to participation in the distributable profits of the company after the due and prior payment of the fixed cumulative annual dividend payable on the Preferred Stock . . .

Under Article 5 of the By-Laws, the Preferred stock had a par value of \$100.00 per share. Article 13 of the By-Laws provides as follows:

The preferred stock shall earn a seven per cent fix cumulative annual dividend which shall be paid to the holders of that class of stock in quarterly installments, each payable within fifteen days following the expiration of the respective quarterly period . . .

Although the holders of the preferred shares would be entitled to par value of \$100.00 per share at the time of dissolution, an examination of the above balance sheet as adjusted indicates that the amount available for distribution among the preferred shareholders was \$519,147.91 or, \$96.64 per share. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of preferred stock in The Bohon Trading Corporation is \$96.64.

As to the common stock of The Bohon Trading Corporation, the net assets, if any, available for distribution are to be calculated by deducting the liabilities and that portion of the capital investment listed for the outstanding Preferred Stock and accumulated dividends from the total assets. It is apparent that, after application of available assets to the total par value of outstanding shares of Preferred Stock, there were no funds available for distribution among the shares of common stock in the company. The common stock of The Bohon Trading Corporation, therefore, had no value on the date of loss.

In the instant claim, the Commission concludes that claimant, as holder of 5,318 shares of the 7% Preferred Stock, Series B, of The Bohon Trading Corporation suffered a loss in the amount of \$513,137.91 within the meaning of Title V of the Act, as a result of the nationalization of The Bohon Trading Corporation by the Government of Cuba on October 13, 1960.

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.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that STEVENS & THOMPSON PAPER COMPANY 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 Five Hundred Thirteen Thousand Nine Hundred Thirty-One Dollars and Fifty-Two Cents (\$513,931.52) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

3 JUL 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)