

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

IN THE MATTER OF THE CLAIM OF

EUGENIO CALABI
PETER G. TREVES
GIULIANA CALABI

Claim No. CU-2337
Claim No. CU-3405
Claim No. CU-3406
Claim No. CU-3145

Decision No. CU 3603

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Shea, Gallop, Climenko & Gould

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$817,186.57, were presented by EUGENIO CALABI, PETER G. TREVES and GIULIANA CALABI, based upon the asserted losses of stock interests in a Cuban Corporation, Plasticos Industriales Extrusos, S.A., and a bank account in Cuba. EUGENIO CALABI and his wife, GIULIANA CALABI, nationals of the United States by naturalization since December 2, 1943 and June 12, 1956, respectively, each claim a 3.33% interest in the said Cuban Corporation, identified by claimants as Plinex, and each claims a loss of \$233,100.00 (Claim Nos. CU-2337 and CU-3406). PETER G. TREVES, a national of the United States by naturalization since July 19, 1945, claims a loss of \$350,000.00 for a 5% interest in Plinex (Claim No. CU-3405), and a loss of \$986.57 for a debt owed by a Cuban national (Claim No. CU-3145).

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.

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The record contains copies of the stock certificates issued to EUGENIO CALABI and GIULIANA CALABI, representing their stock interests in Plinex, and an affidavit, dated January 5, 1968, from Enrico Treves, brother of PETER G. TREVES, attesting to the fact that he personally had in his possession the shares of stock of Plinex, representing his brother's 5% interest therein and that in 1961 when he was compelled to flee Cuba, these stock certificates were left behind and cannot be obtained. The evidence also includes a copy of the minutes of a special meeting of the stockholders of Plinex in New York, New York on November 25, 1962, in which the respective interests owned by the stockholders is set forth; as well as statements and affidavits concerning ownership of the stock interests for which claims were made.

On the basis of the entire record, the Commission finds claimants have owned since prior to January 29, 1962 the following stock interests in Plinex:

EUGENIO CALABI	3.33%
PETER G. TREVES	5.00%
GIULIANA CALABI	3.33%

On January 29, 1962, the Cuban Government published in its Official Gazette Resolution IV, pursuant to Law 890, which listed as nationalized Plasticos Industriales Extrusos, S.A. The Commission finds that as a result of the nationalization of Plinex by the Government of Cuba, claimants sustained losses within the meaning of Title V of the Act.

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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. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (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." 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.

Claimants have asserted that the estimated net worth of Plinex on the date of loss was \$7,000,000.00 "based upon its assets and earning power." In support of these assertions, claimants have submitted a copy of the balance sheet for Plinex as of October 31, 1961, prepared by a Cuban accountant. That balance sheet shows the financial condition of Plinex as follows in pesos, which were on a par with United States dollars:

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Assets

Current Assets:

Cash in banks		320,579.59
Cash on hand		11,289.81
Accounts receivable, less bad debts of 20,000.00 pesos		167,946.24
Accounts receivable from employees		245.84
Other accounts receivable		52.49

Inventories at cost:

Finished goods	96,053.86	
Goods in process	16,960.14	
Raw materials	112,470.62	
Materials for processing	<u>35,709.15</u>	

Total Inventories 261,193.77

Materials in transit 55,710.80

Total Current Assets 817,018.54

Investments at cost 21,800.00

Fixed Assets:

Machinery & equipment, less depreciation of 59,366.62 pesos	167,008.59	
Furniture & fixtures, less depreciation of 23,609.71 pesos	45,674.54	
Rolling stock, less depreciation of 7,542.84 pesos	6,219.06	
Mortises, forms, molds	35,134.37	
Tools	11,347.35	
Construction in process	<u>178,417.70</u>	

Total Fixed Assets 443,801.61

Other Assets and Deferred Charges:

Supplies and accessories	17,739.87	
Amortized patents	5,989.53	
Items in transit	170.02	
Desks and library	4,174.72	
Improvements on leased properties	69,333.44	
Amortized organization expenses	16,230.10	
Deferred charges	<u>1,878.00</u>	

Total Other Assets and Deferred Charges 115,515.68

Total Assets 1,398,135.83

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Liabilities and Capital

Current Liabilities:		
Sundry	136,247.63	
Other liabilities	13,570.41	
Taxes payable	12,502.41	
Commissions payable	4,235.36	
Accrued liabilities	<u>17,153.94</u>	
Total Current Liabilities		183,709.75
Due Inmobiliaria Plincar, S.A.		57,433.44
Debts due National Bank		<u>24,000.00</u>
Total Liabilities		265,143.19
Capital:		
Authorized - 4,500 common	450,000.00	
4,500 preferred	<u>450,000.00</u>	
	<u>900,000.00</u>	
Stock issued:		
2,970 common at 100	297,000.00	
720 preferred at 100	<u>72,000.00</u>	
Total Capital Stock		369,000.00
Surplus:		
Balance	204,874.95	
Less dividends	<u>23,653.20</u>	
	181,221.75	
Estimated profit	<u>582,770.89</u>	
Total Surplus		<u>763,992.64</u>
Total Liabilities, Capital and Surplus		<u>1,398,135.83</u>

According to the foregoing balance sheet, the net worth of Plinex as of October 31, 1961 was \$1,077,992.64, representing the excess of the assets over the liabilities after a reduction of the assets to the extent of \$55,000.00 for assets of Plinex located outside of Cuba, as stated by PETER G. TREVES, President of Plinex, in his affidavit of December 2, 1968.

The record shows that Plinex was engaged in manufacturing and distributing plastic products in Cuba. In view of claimants' assertions that the estimated net worth of Plinex was \$7,000,000.00, the Commission suggested the submission of appropriate supporting evidence in this respect. Counsel for claimants replied that they have no further evidence to submit to establish that the net worth of Plinex exceeded the amount shown in the balance sheet of October 31, 1961.

Claimants' response to other inquiries by the Commission concerning the items "Investments - At Cost", "Amortized Patents", and "Estimated Profit", appearing in said balance sheet, was in the form of a memorandum, dated February 2, 1969, from an official of Plinex.

With respect to "Investments - At Cost", the official stated that it included investments made by Plinex in 1957 and 1958, as follows:

198 shares of stock of "Inmobiliaria Plincar", with a face value of \$100.00 per share	\$ 19,800.00
1 share of stock of Cuban Occidental Railways with a face value of \$100.00 per share	100.00
1 Mortgage Bond of the Cuban Electric Company with 5% interest, having a nominal value of \$1,900.00	<u>1,900.00</u>
	\$ 21,800.00

The official stated that the item "Amortized Patents" appearing on the balance sheet referred to trademarks and patents to be depreciated. He added that the amount of \$5,989.53, appearing in the balance sheet as the value of this item, represented only the expenses incurred in obtaining the trademarks and patents, and that the unexpired period of the patents in 1961 was approximately 12 to 14 years. However, neither the official's statement nor the record of these claims contains anything that would indicate the nature of these trademarks and patents or establish their value on the date of loss.

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimants is that shown by the balance sheet of Plinex as of October 31, 1961, only three months prior to the date, January 29, 1962, when Plinex was nationalized by the Government of Cuba.

There being no evidence to establish the nature of the trademarks and patents or their specific value on the date of loss, the Commission finds that the aggregate value of these items was \$5,989.53, as indicated in said balance sheet.

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The Commission finds that the items, "Improvements on leased properties" and "Organization expenses", enhanced the value of the business conducted by Plinex in Cuba. The Commission, therefore, concludes that these items constituted assets of Plinex, and finds that their values on the date of loss were \$69,333.44 and \$16,230.10, respectively.

Accordingly, the Commission finds that the value of Plinex on January 29, 1962 was \$1,077,992.64. The Commission further finds that EUGENIO CALABI, PETER G. TREVES and GIULIANA CALABI sustained losses in the amounts of \$35,897.15, \$53,899.63, and \$35,897.15, respectively.

Claim No. CU-3145

This claim was filed by PETER G. TREVES, based upon a debt in the amount of \$986.57, for merchandise shipped to a Cuban consignee.

The record establishes that Rabade News Company of Havana, Cuba, owed claimant the sum of \$986.57 for merchandise sold and recorded in an open account. This balance of \$986.57 was last recorded in the open account as of March 31, 1960. It further appears from the record that the Cuban consignee paid the sum of \$478.66 to a Cuban bank on February 11, 1960 on account of its debt to claimant. However, claimant never received either those funds or any other payment for the merchandise in question.

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 claimant 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 claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the

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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.)

Accordingly, the Commission finds that PETER G. TREVES sustained a loss of \$478.66 on February 12, 1960, being one day after payment was acknowledged by the Cuban bank, and a loss of \$507.91 on April 30, 1960, being 30 days after the last entry in the open account.

Interest

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 as follows:

<u>Claim No.</u>	<u>Claimant</u>	<u>From</u>	<u>On</u>
CU-2337	EUGENIO CALABI	January 29, 1962	<u>\$35,897.15</u>
CU-3405	PETER G. TREVES	January 29, 1962	<u>\$53,899.63</u>
CU-3406	GIULIANA CALABI	January 29, 1962	<u>\$35,897.15</u>
CU-3145	PETER G. TREVES	February 12, 1960	\$ 478.66
CU-3145	PETER G. TREVES	April 30, 1960	<u>507.91</u>
Total for Claim CU-3145			<u>\$ 986.57</u>

CERTIFICATION OF LOSS

The Commission certifies that EUGENIO CALABI 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 Thirty-five Thousand Eight Hundred Ninety-seven Dollars and Fifteen Cents (\$35,897.15) with interest thereon at 6% per annum from January 29, 1962 to the date of settlement;

the Commission certifies that PETER G. TREVES 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-three Thousand Eight Hundred Ninety-nine Dollars and Sixty-three Cents

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(\$53,899.63) with interest thereon at 6% per annum from January 29, 1962 to the date of settlement;

the Commission certifies that GIULIANA CALABI 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 Thirty-five Thousand Eight Hundred Ninety-seven Dollars and Fifteen Cents (\$35,897.15) with interest thereon at 6% per annum from January 29, 1962 to the date of settlement; and

the Commission certifies that PETER G. TREVES 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 Nine Hundred Eighty-six Dollars and Fifty-seven Cents (\$986.57) with interest at 6% per annum on \$478.66 from February 12, 1960 and on \$507.91 from April 30, 1960 to the date of settlement.

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

APR 16 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

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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 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 claimants establish retention of the securities for the loss here certified.

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