

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

IN THE MATTER OF THE CLAIM OF

BEHN BROTHERS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2493

Decision No. CU = 6015

Counsel for claimant:

Davis Polk & Wardwell
By Edward V. Atnally, Esq.

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 BEHN BROTHERS, INC. for \$114,675.00 based upon the asserted ownership and loss of the assets of its Havana branch.

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 in Delaware and that as of April 1, 1967, 80% of the outstanding stock of claimant corporation was owned by nationals of the United States. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claimant was engaged in the sale of automobiles and acted as agents or brokers for several insurance companies. Based on the evidence of record including an affidavit of the vice president of claimant corporation, the Commission finds that claimant's operations in Cuba were intervened by the Government of Cuba on October 20, 1960, and that claimant thereby suffered a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Bank accounts	\$ 18,235.00
Furniture and Fixtures	12,201.00
Automobile parts inventory	6,263.00
Notes receivable	5,252.00
Agency accounts	72,384.00
Special deposits	<u>340.00</u>
	\$114,675.00

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.

In support of the asserted values, the record contains a copy of the balance sheet of the Havana branch of claimant corporation as of December 31, 1959, including copies of supporting documents.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in this balance sheet, which reflects the following:

ASSETS

CURRENT ASSETS		
Cash in banks		\$ 25,957.35
Working funds		550.18
Accounts receivable-		
Due from principals, brokers and clients	\$93,535.98	
Other accounts receivable	<u>245.11</u>	
	\$93,781.09	
Less-Reserve for doubtful accounts	<u>548.48</u>	93,232.61
Inventories		<u>41,854.68</u>
Total current assets		\$161,594.82
SPECIAL DEPOSITS		340.00
FURNITURE, FIXTURES AND OTHER EQUIPMENT	\$12,113.13	
Less-Reserve for depreciation	<u>6,699.90</u>	5,413.23
PREPAYMENTS		<u>210.91</u>
		<u>\$167,558.96</u>

This balance sheet indicates the value of the assets of the Cuban branch of BEHN BROTHERS, INC. as \$167,558.96. The Commission in this regard has consistently not reduced the value of the assets of an American corporation

doing business through a branch in Cuba by any liabilities in its determinations under Title V of the Act except those subject to set-off as debts owing to the Government of Cuba. The reason is that the claimant may remain liable for the debts. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.)

Accordingly, no deduction is made for the items of liabilities shown on the balance sheet, and the Commission concludes that claimant suffered a loss in the amount of \$167,558.96 on October 20, 1960 within the meaning of Title V of the Act.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.


The Commission has decided that in certifications of loss 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.

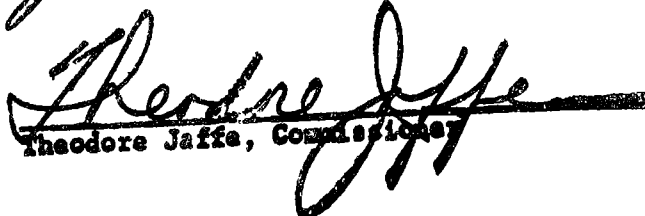
CERTIFICATION OF LOSS

The Commission certifies that BEHN BROTHERS, 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 One Hundred Sixty-seven Thousand Five Hundred Fifty-eight Dollars and Ninety-six Cents (\$167,558.96) with interest at 6% per annum from October 20, 1960 to the date of settlement.

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

JAN 6 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)