EXHIBIT B

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

IN THE MATTER OF THE CLAIM OF

JULIUS J. SHEPARD

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-0407

Decision No. CU 3453

Counsel for claimant: Rufus King, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of $1,074,758.00, was presented by JULIUS J. SHEPARD and is based upon the asserted ownership and loss of a 100% interest in Compania Hotelera Shepard, S.A., a Cuban entity. Claimant has been a national of the United States since birth.

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.

Claimant states that he owned 9,800 shares of stock of Compania Hotelera Shepard, S.A. (hereafter referred to as "Shepard"), representing a 100% interest in this corporation.

The record discloses that "Shepard" 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. It has been held previously that a stockholder in such a corporation who qualifies as an American national is entitled to file a claim based upon his stock, which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant asserts that "Shepard" was taken by Cuba on May 11, 1960. However, records available to the Commission disclose that "Shepard" was listed as nationalized by Cuba in Resolution 3 of October 24, 1960, pursuant to Law 851.

Claimant has not submitted stock certificates evidencing his asserted 100% interest in "Shepard," stating that upon his forced departure from Cuba after the seizure of his property on May 11, 1960, he was unable to take them with him. Claimant has submitted affidavits from associates, friends and employees attesting to his ownership of "Shepard" and that claimant's asserted loss of $1,074,758.00 is entirely reasonable.

Among evidence submitted, is an audited balance sheet of September 30, 1959, bearing a note that all of the issued stock of "Shepard," as well as

certain income, was pledged as collateral for notes held by Banco Financiero. There is no evidence that the pledgee had returned the stock to its owner. In similar cases the Commission has held that the party in interest is the pledgee. (See Claim of Helen Sigman, Trustee, Claim No. PO-5955.)

Accordingly, so much of the claim as is based on a stock interest must be and is hereby denied. Nevertheless and without deciding, even if claimant had established that he held an interest in the stock on October 24, 1960, other considerations are dispositive of claimant's asserted loss in this connection.

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 circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that the phraseology does not differ from the international legal standard which would normally prevail in the valuation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation which the Commission shall consider: i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has computed the value of his claim as follows:

9,800 shares of "Shepard" which he states had a value of $100.00 per share in May 1960	$ 980,000.00
Loans to "Shepard" to April 30, 1960	107,400.00
Loans to corporation from May 1, 1960 to August 26, 1965, of which he states $10,799.00 was paid to United States creditors of "Shepard" and $50,000.00 in litigation with one Dumas Milner	60,799.00

Less loans from "Shepard"	(73,441.00)
Total claimed	$1,074,758.00

In support of his claim, claimant has submitted an audited balance sheet for "Shepard" as of September 30, 1959 with supporting schedules and explanatory notes, as well as a balance sheet and schedules as of April 30, 1960. Claimant, in his letter of June 14, 1968 to his attorney, stated that it was difficult to have his books audited to support his April 1960 balance sheet because all the books and ledgers had been confiscated in Havana, Cuba. He added, however, that the April 30, 1960 financial report had been prepared by his comptroller and auditor.

The audited balance sheet as of September 30, 1959 shows the financial condition of "Shepard" as follows:

ASSETS

Current assets		
Cash on hand	$ 7,600.00	
Cash in banks	1,307.42	$ 8,907.42
Accounts receivable		
Guest and city accounts	27,884.26	
Store rentals	15,865.82	
Returned checks	3,133.90	
Government of the Republic of Cuba	19,437.59	
Other	4,442.59	
Total	$ 70,764.16	
Less provision for doubtful accounts	8,293.17	62,470.99
Inventories		
Food	3,611.79	
Beverages	7,601.45	11,213.24
Prepaid expenses		
Insurance	$ 1,017.19	
Licenses	68.18	
Service contract	49.70	1,135.07
Total current assets		$ 83,726.72
Deposits		
Hotelera de la Habana, S.A. - rent	$210,000.00	
Cia Cuban de Electricidad	6,000.00	
Pan American World Airways	425.00	216,425.00
Fixed assets - net		292,655.55
Operating assets - net		11,649.94
Leasehold		800,000.00
Deferred charges		
Organization expense	$ 62,109.88	
Supplies	6,711.61	68,821.49
Due from J. J. Shepard - officer		77,225.30
Total assets		$1,550,504.00

LIABILITIES AND CAPITAL

Current liabilities		
Overdraft - Banco Financiero, Havana		$ 12,112
Credit balances in accounts receivable		1,678
Trade accounts payable		137,730
Other accounts payable		3,088
Concessions payable		3,414
Taxes payable		2,643
Accrued expenses		79,729
Due to Sidney Rogers		5,499
Payments on long-term liabilities due within one year		161,786
Contract payable - National Cash Register Company		544
Total current liabilities		$ 408,227
Security deposits payable	$ 107,000.00	
Less refundable within one year	33,400.00	73,600
Notes payable	$ 486,986.50	
Less due within one year	95,986.50	391,000
Notes payable -		
J. J. Shepard, Officer	107,400.00	
Less due within one year	32,400.00	75,000
Total liabilities		$ 947,827
Capital		
Capital stock - common - par value $100.00		
Authorized - 10,000 shares	$1,000,000.00	
Unissued - 200 shares	20,000.00	
Issued and outstanding - 9,800 shares	$ 980,000.00	
Deficit	377,323.32	602,676
Total liabilities and capital		$1,550,504

At the bottom of this balance sheet, the auditors added the following notes:

1. The Compania Hotelera Shepard, S.A., a Cuban corporation, operates the Hotel Capri de Havana, Havana, Cuba under a twenty-year lease dated December 1, 1957 with the Compania Constructora Jaime Canaves, S.A. at an annual rental of $210,000.00 payable proportionately at the end of each month.

2. All of the issued capital stock was pledged as collateral for the notes held by Banco Financiero in addition to the lease agreements for the casino, gift shop, barber shop and beauty shop.

The balance sheet of "Shepard" as of April 30, 1960 shows the following:

ASSETS

Current Assets		
Cash on Hand	$ 7,600.00	
Cash in Banks	7,147.92	$ 14,747.92
Accounts receivable		
Guests and city ledger	$ 40,405.70	
Store rentals	12,228.44	
Government of the Republic of Cuba	19,437.59	
Returned checks	3,347.67	
Casino electricity and legal expenses	2,987.50	
Employees	793.15	
Others	1,143.68	
Total	$ 80,343.73	
Less provision for bad debts	9,753.45	70,590.28
Accrued interest receivable - Utility		167.75
Inventories		
Newsstand	$ 1,010.57	
Food	3,309.78	
Beverages	7,537.83	11,858.18
Prepaid Expenses		
Service Contract - National Cash Register	$ 60.85	
Commission - St. Moritz Hotel	500.00	
Licenses	158.16	719.01
Total current assets		$ 98,083.14
Deposits		
Hotelera de la Habana, S.A. (See Note)	$210,000.00	
Cia. Cubana de Electricidad - Utility	6,000.00	$ 216,000.00
Contract receivable		
Industria Cinematografica Cubana		2,412.00
Fixed assets		
Furniture and equipment	$221,486.19	
Leasehold improvements	124,210.10	
Total depreciable assets	$345,696.29	
Less reserve for depreciation and amortization	69,090.25	276,606.04
Operating assets		10,984.32
Leasehold - 18 years		800,000.00
Deferred expenses		
Organization	$ 60,097.03	
Brochures	4,630.42	64,727.45
Due from stockholders - J. J. Shepard		73,440.83
Total assets		$1,542,253.78

LIABILITIES AND CAPITAL

Current liabilities		
Accounts payable - trade		$ 156,738.97
Accounts payable - others		2,445.15
Loan to employees - Banco Godoy Sayan		1,165.00
Night Club charges		290.00
Taxes payable		5,820.81
Accrued payroll		7,575.22
Accrued vacation pay		30,047.85
Rent payable to Hotelera de la Habana		134,750.00
Notes payable due in one year		487,754.70
		1,791.15
Accrued interest payable		5,510.51
Accrued expenses - others		1,500.24
Contract payable - National Cash Register		391.00
Security deposits refundable in one year Schedule A-8		8,000.00
Due Sidney Rogers (Former Rest. Manager)		796.22
Notes payable J. J. Shepard due within one year		57,400.00
Total current liabilities		$ 901,976.82
Notes payable	$ 571,754.70	
Less due in one year	487,754.70	84,000.00
Security deposits payable	$ 67,500.00	
Less due in one year	8,000.00	59,500.00
Notes payable, J. J. Shepard	$ 107,400.00	
Less due in one year	57,400.00	50,000.00
Total liabilities		$1,095,476.82
Capital		
Capital stock - Common		
Authorized 10,000 shares $100.00 par value	$1,000,000.00	
Unissued 200 shares $100.00 par value	20,000.00	
	$ 980,000.00	
Less Deficit	533,223.04	446,776.96
Total Liabilities and capital		$1,542,253.78

At the bottom of this balance sheet, the following note was added:

Lease contract with Hotelera de la Habana states that of this total deposit of $210,000.00, only $100,000.00 are refundable.

The Commission finds that the balance sheet of April 30, 1960, the most recent available financial information concerning "Shepard," is the valuation most appropriate to the property and equitable to claimant. It may be noted at this point that the conclusions drawn herein would not be altered if the balance sheet of September 30, 1959 were found more appropriate. However, certain adjustments are warranted.

The auditors who prepared the September 30, 1959 financial report stated that the balance sheet and profit and loss statement "with one exception, present fairly the financial position" of "Shepard," and that "The one exception in our certification is the leasehold asset valuation of $800,000.00 on the balance sheet concerning which we were unable to satisfy ourselves." The report as of April 30, 1960 contains no statement concerning the leasehold although the balance sheet as of April 30, 1960 shows it as an asset in the same amount, $800,000.00.

Under date of August 29, 1968, the Commission suggested the submission of evidence to establish that the leasehold had a value of $800,000.00, including a copy of the lease. No reply having been received, another letter was addressed under date of November 27, 1968 to counsel for claimant again suggesting appropriate evidence in this respect. To date no reply has been received to either letter.

As indicated in the two said balance sheets with supporting schedules, the accumulated deficit resulting from operating Hotel Capri under "Shepard's" lease for the years 1958, 1959 and up to April 30, 1960 was $533,223.04. In the light of all of these circumstances and in the absence of any evidence to the contrary, the Commission finds that on the date of loss the leasehold had no value.

As stated previously, it appears from the notes at the end of the September 30, 1959 balance sheet that all of the issued stock of "Shepard" "was pledged as collateral for the notes held by Banco Financiero in addition to the lease agreements for the casino, gift shop, barber shop and beauty shop."

The record shows that the notes were due on December 31, 1960 and it appears from a comparison between the 1959 and the 1960 balance sheets that the amount due Banco Financiero had increased from $290,000.00 as of September 30, 1959 to $400,000.00 as of April 30, 1960 and that as of the

latter date the notes payable aggregated $571,754.70 compared with $486,986.50 as of September 30, 1959. It is clear, therefore, that no payments were made on account of the notes due Banco Financiero, and it further appears from Schedule A-7 supporting the 1960 balance sheet that several overdue notes owing to others had been protested.

The record does not include a copy of the loan agreement with Banco Financiero pursuant to which the shares of stock were pledged. In the absence of evidence in the record, the Commission is unable to determine whether the pledgee had the right to foreclose and sell the stock and under what conditions, and there is no evidence to indicate whether such foreclosure and sale did take place. If in fact a proper sale did take place pursuant to the terms of the pledge agreement, claimant's rights and interests in the said shares of stock would have been terminated.

The note appearing at the bottom of the April 30, 1960 balance sheet states that out of the total deposit of $210,000.00 pursuant to the lease agreement for Hotel Capri, only $100,000.00 was refundable. The Commission therefore finds that the asset listed under deposit in the amount of $210,000.00 had a value of $100,000.00 on the date of loss.

The 1959 and 1960 balance sheets include "Organization expense" of $62,109.88 and $60,097.03, respectively. No evidence has been submitted to establish that this item was anything other than expenses, lawyer's fees and other charges relating to the formation of "Shepard," which are being amortized. The Commission consistently has held such an item not to constitute an asset for the purpose of determining the value of a nationalized enterprise. In the absence of evidence proving that this item had any value, the Commission finds that this item did not constitute an asset of "Shepard" on the date of loss.

These two balance sheets also show that claimant was indebted to "Shepard" and that "Shepard" was indebted to claimant. The April 30, 1960

balance sheet indicates a debt due from claimant to "Shepard" in the amount of $73,440.83, a reduction of $3,784.47 from the 1959 figure, evidencing that claimant had repaid his debt to "Shepard" to that extent. However, the debt "Shepard" owed to claimant in the amount of $107,400.00 remained the same on both balance sheets. Accordingly, pursuant to the doctrine of set-off, the Commission finds that the net debt due claimant from "Shepard" was $33,959.17. (See Claim of Simmons Company, CU-2303.)

Giving effect to all of the foregoing adjustments, the Commission finds that the assets and liabilities of "Shepard" on October 24, 1960, the date of loss, were as follows:

Assets		
Current Assets		
Cash in bank and on hand		$ 14,747.92
Accounts receivable less reserve for bad debts (not including debt due from claimant)		70,590.28
Accrued interest receivable - Utility		167.75
Inventories		11,858.18
Prepaid expenses (Deferred charges)		719.01
Total Current Assets		98,083.14
Deposits		
Hotelera de la Habana, S.A.	$100,000.00	
Cia. Cubana de Electricidad - Utility	6,000.00	
Total Deposits		$ 106,000.00
Contract receivable		2,412.00
Fixed Assets		
Furniture and equipment	221,486.19	
Leasehold improvements	124,210.10	
Total Fixed Assets	345,696.29	
Less reserve for depreciation and amortization	69,090.25	
Net Fixed Assets		276,606.04
Operating assets		10,984.32
Supplies		4,630.42
Total Assets		$ 498,715.92
Liabilities		
Accounts and notes payable (not including notes payable to claimant)		$ 988,076.82
Net debt payable to claimant		33,959.17
Total Liabilities		$1,022,035.99

Accordingly, it is clear that "Shepard" had no net worth on the date of loss. The Commission therefore finds that claimant, even if his interest in the capital stock were established, suffered no loss as a result of the nationalization of "Shepard" by the Government of Cuba.

The Commission has held, however, that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105.) The Commission has adhered to this ruling despite the fact that the debtor Cuban corporation was insolvent, as in this case. (See Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887; Claim of Honeywell, Inc., Claim No. CU-2678.)

On the basis of the evidence of record, the Commission finds that "Shepard" owed claimant a net debt in the amount of $33,959.17 on the date of loss, and that claimant sustained a loss in that amount within the meaning of Title V of the Act.

Under date of April 24, 1968, the Commission suggested the submission of evidence to support the asserted loan to "Shepard" of $60,799.00. In claimant's reply of June 14, 1968, addressed to his attorney herein, a copy of which was submitted to the Commission, claimant stated that $10,799.00 represented the amount he personally paid to American creditors which he could substantiate by cancelled checks and that the $50,000.00 is the amount which Dumas Milner is seeking to recover in a suit against claimant which "is still pending in court." Neither any evidence to establish that claimant paid creditors of "Shepard" the amount of $10,799.00 nor proof of the nature of the suit by Dumas Milner has been submitted. In any event, since the matter is still pending in court, according to claimant, and there is no evidence to show why claimant was sued personally for a debt owed by a Cuban entity, and there being no proof that the $50,000.00 has been paid by claimant, the Commission finds that claimant has not sustained his burden of proving that "Shepard" owed him a debt in the amount of $60,799.00. Accordingly, this portion of the claim is denied.

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 JULIUS J. SHEPARD 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-three Thousand Nine Hundred Fifty-nine Dollars and Seventeen Cents ($33,959.17) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

JAN 14 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).)