

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

IN THE MATTER OF THE CLAIM OF

EASTMAN KODAK COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0518

Decision No. CU -2695

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 EASTMAN KODAK COMPANY in the amount of \$811,250.96 based upon the asserted loss of the assets of its former wholly-owned subsidiary, and of payment for merchandise shipped to 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of New Jersey and that at all times between July 1, 1902 and presentation of this claim on October 19, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that approximately 5% of its 144,000 stockholders were residents of foreign countries and assumed to be citizens of those countries.

An officer of the EASTMAN KODAK COMPANY has certified, and the Commission finds, that claimant owned 100% of the capital stock of Kodak Cubana, Limited, and that Kodak Cubana, Limited, was organized under the laws of the State of New York on October 11, 1926. Kodak Cubana, Limited was dissolved on November 16, 1962 and all assets and liabilities were assumed by the EASTMAN KODAK COMPANY.

On October 24, 1960, the Government of Cuba published in its Official Gazette, Resolution No. 3 (pursuant to Law 851 of July 6, 1960) which listed as nationalized claimant's wholly-owned subsidiary, Kodak Cubana, Limited.

Accordingly, the Commission finds that the assets in Cuba of Kodak Cubana, Ltd., were nationalized by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act. Therefore, claimant is entitled to file this claim (See Claim of Berwind Corporation, Claim No. CU-0538).

In making determinations with respect to the validity and amount of claims and the value of properties, rights, and interests taken, the Act provides in Section 503(a) that 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.

Claimant has stated its loss in the amount of \$811,250.96, computed as follows:

Merchandise Inventory	\$ 75,000.00
Machinery, furniture and fixtures	100,000.00
Accounts Receivable	144,250.96
Bank Accounts	342,000.00
Paid Drafts	150,000.00

Claimant has submitted a balance sheet for the Cuban operation for June 30, 1960, which reflects a figure of \$89,138.14 for inventories. From this claimant has deducted \$14,138.14 as the estimated reduction resulting from business operations from June 30, 1960 to October 24, 1960. This results in \$75,000, the estimated figure of the former Manager of Kodak Cubana, Ltd.

Similarly, the balance sheet gives a figure of \$243,515.63 as the cost of machinery, furniture and fixtures, from which claimant deducts the reserve for depreciation of \$135,724.74, resulting in a net of \$107,790.89. The figure has then been reduced by claimant to \$100,000, adopting the estimate of the former Manager.

The claimed figure of \$144,250.96 for accounts receivable is set forth in three pages of a trial balance for August 31, 1960.

Concerning the bank account, the evidence of record includes a letter of September 27, 1960, from the Manager of Kodak Cubana, Ltd., which gave the company bank balances generally totalling \$348,056.24. However, the Manager certifies the amount as \$342,000, which is the amount claimed.

The Commission finds that the aforesaid figures of \$75,000, \$100,000, \$144,250.96 and \$342,000, a total of \$661,250.96 is the fair value for the assets of Kodak Cubana, Ltd., taken by the Government of Cuba.

Accordingly, the Commission finds that, as a result of the taking of the assets of Kodak Cubana, Ltd., by the Government of Cuba, claimant succeeded to and suffered a loss in the amount of \$661,250.96 within the meaning of Title V of the Act.

In addition, claimant asserts a loss in the amount of \$150,000 for merchandise shipped to Kodak Cubana, Ltd.. Evidence of record establishes that the subsidiary paid to the First National City Bank of New York, Havana Branch, \$12,303.88 on November 16, 1959 and \$137,493.05 on November 19, 1959, and that on the date of expropriation of the properties of Kodak Cubana, Ltd., authorization for dollar reimbursement was still pending with the Exchange Board, a Cuban government agency. Claimant states that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, in the instant claim the Commission finds that claimant's interest in payment for goods shipped to Cuba was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on November 17, 1959 as to \$12,303.88 and on November 20, 1959 as to \$137,493.05, the dates after the days on which payment was made to the Cuban bank.

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 dates 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 the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>FROM</u>	<u>ON</u>
November 17, 1959	\$ 12,303.88
November 20, 1959	137,493.05
October 24, 1960	<u>661,250.96</u>
	TOTAL \$811,047.89

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CERTIFICATION OF LOSS

The Commission certifies that EASTMAN KODAK COMPANY succeeded to and suffered a loss, as a result of the 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 Eight Hundred Eleven Thousand Forty-Seven Dollars and Eighty-Nine Cents (\$811,047.89) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 14 1968

Leonard v. B. Sutton

Leonard v. P. Sutton, Chairman

Theodore Jarfe

Theodore Jarfe, Commissioner

Sidney Brodberg

Sidney Brodberg, 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).)