

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

IN THE MATTER OF THE CLAIM OF

LANMAN & KEMP-BARCLAY & CO., INC.  
LANMAN & KEMP-BARCLAY & CO. DE CUBA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0585

Decision No. CU 3699

Counsel for claimants:

Schaefer & Gallo

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$313,259.20, was presented by LANMAN & KEMP-BARCLAY & CO., INC. and LANMAN & KEMP-BARCLAY & CO. DE CUBA, based upon the asserted loss of certain personal property in 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.

The record shows that LANMAN & KEMP-BARCLAY & CO., INC., hereafter referred to as the parent, owned all of the outstanding capital stock of LANMAN & KEMP-BARCLAY & CO. DE CUBA, hereafter referred to as the subsidiary. The parent and the subsidiary were organized under the laws of New York and Delaware, respectively. The parent has stated that as of May 31, 1961, the asserted date of loss, 15.90% of its preferred stock and 1.92% of its common stock was owned by nonnationals of the United States, and that as of December 2, 1965, 29.70% of its preferred stock and 1.92% of its common stock was owned by nonnationals of the United States. On both dates the parent had 20,631 shares of preferred stock and 50,000 shares of common stock outstanding. The Commission holds that both claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides, inter alia, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered. Since the parent's claim is based upon its 100% ownership interest in the subsidiary, a national of the United States, that claim must be and hereby is denied. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

It appears from the record that the subsidiary was authorized to do business in Cuba and maintained there a branch office and plant. The subsidiary's business in Cuba consisted of manufacturing, selling and distributing certain medicinal products, soaps and toilet articles.

On April 4, 1962, the Cuban Government published a notice in its Official Gazette in which it announced the nationalization of the subsidiary's branch. The Commission therefore finds that the subsidiary's assets in Cuba were nationalized on April 4, 1962, as a result of which the subsidiary sustained 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, 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.

The subsidiary has itemized its losses in Cuba as follows:

Cash			\$ 73,767.52
Accounts Receivable			29,700.96
Inventories at Cost:			
Raw Materials at Cost			19,610.65
Finished Stocks at Cost			11,177.67
Packing & Shipping Supplies			249.59
Land	Market Value		40,000.00
Building	" "		80,000.00
Machinery & Equipment	" "		43,000.00
Furniture & Fixtures	" "		11,000.00
Fargo Truck	Book Value		2,650.00
Dodge Automobile	" "		1,535.32
" " "	" "		1,535.32
Prepaid & Deferred Charges:			
Stationery Supplies			378.25
Employees Expenses Advances			500.00
Deposits to Guarantee Contracts			50.00
			<u>\$315,155.28</u>
Less:			
Accrued Taxes Payable	\$914.11		
Social Security Taxes Payable	<u>981.97</u>		
			<u>1,896.08</u>
			\$313,259.20

The subsidiary's balance sheet of May 31, 1961 sets forth as follows its assets in Cuban pesos, which were on a par with United States dollars:

Current Assets:

Cash			73,767.52
Accounts Receivable			29,700.96
Inventories at Cost			
Raw Materials	19,610.65		
Finished Goods	11,177.67		
Packing & Shipping Supplies	<u>249.59</u>	<u>31,037.91</u>	134,506.39

Fixed Assets:

Land			20,091.49
Building (cost)	48,806.25		
less Res. for Depreciation	<u>13,285.94</u>	35,520.31	
Furniture & Fixtures (cost)	6,627.34		
less Res. for Depreciation	<u>4,561.70</u>	2,065.64	
Machinery & Equipment (cost)	26,234.04		
less Res. for Depreciation	<u>14,402.72</u>	11,831.32	
Fargo Truck		2,650.00	
Dodge Auto (cost)	3,973.90		
less Res. for Depreciation	<u>2,438.58</u>	1,535.32	
Dodge Auto (cost)	3,890.99		
less Res. for Depreciation	<u>2,355.67</u>	<u>1,535.32</u>	75,229.40

Prepaid Expenses & Deferred Charges:

Stationery Supplies			378.25
Employees Expense Advances			500.00
Deposits to Guarantee Contracts			60.00
			<u>938.25</u>

Total Assets 210,674.04

It is noted that the itemized list showing the amount of \$315,155.28 as the asserted aggregate value of the subsidiary's assets in Cuba is identical with the aggregate amount of the assets appearing in the subsidiary's balance sheet of May 31, 1961 except for four items: land, buildings, machinery and equipment, and furniture and fixtures. With respect to these four items, the subsidiary has indicated on the itemized list that their values are market values.

The record includes the following evidence which corroborates the values of the subsidiary's assets as shown in its balance sheet of May 31, 1961:

(a) a copy of the deed evidencing the purchase of land and a building in Havana as of December 4, 1945, for 37,862.19 pesos; (b) copies of invoices, vouchers and extracts from the subsidiary's records showing the improvement of the land by a fence, etc. between 1945 and 1947 at a price which increased the cost of the land from 17,067.94 pesos (allocated from the original total cost of 37,862.19 pesos) to 20,091.49 pesos, as shown in the May 31, 1961 balance sheet; (c) copies of similar invoices, vouchers, etc., establishing that improvements were made to the building between 1945 and 1950, increasing the cost thereof from 20,794.25 pesos (originally) to 48,806.25 pesos as shown in the same balance sheet; (d) bank statements and cash reconciliation statements, showing adjustments for unrecorded deposits and outstanding checks with respect to two bank accounts originally maintained by the subsidiary at the First National City Bank of New York, Havana, Cuba Branch, and subsequently transferred to the National Bank of Cuba, which substantiate the cash balance showing in the May 31, 1961 balance sheet; (e) copies of invoices, vouchers, etc., which establish the purchase of furniture and fixtures between July 1, 1943 and August 3, 1960, in the amount of 6,627.34 pesos, and the acquisition of machinery and equipment between July 1, 1943 and April 30, 1957, at a cost of 26,234.04 pesos, proving the amounts shown in that balance sheet for these items of property. The record also contains extracts from the subsidiary's books and records as well as statements from its officers which verify the accuracy of the asset values appearing in the balance sheet of May 31, 1961.

The subsidiary's assertions as to the value of the four items of property are based upon a study made by an engineer, relating to the values of buildings and machinery, published by the Factory Insurance Association in its "Nationwide Circular No. 232" as of February 1, 1961. This article states that building costs in the United States are still rising and suggests adjustments for insurance coverage purposes. This publication includes factors to be applied, depending upon the year in which the asset was acquired. Thus, the report states that a building acquired in 1945, as in this claim, would cost 2.35 times as much to replace as of January 1, 1961. It notes that the factors used for 1959 and prior years are yearly averages which result in approximate replacement costs. It adds that these building cost factors "are average for the types of buildings in the plants we cover", and "are based upon indexes for the Eastern section of the country, but, in our opinion, the increase in costs has been practically the same nationwide so that the same factors can be used in all sections." Similarly, the report includes a table showing the factors to be applied to machinery.

The subsidiary has employed that report to compute the values of the four items of property by substituting values stated to constitute replacement costs of the assets and depreciating these amounts from the dates of acquisition to December 31, 1960.

The land has been appreciated from its original cost of \$20,091.49 to \$40,000.00, although the foregoing publication makes no reference to land. With respect to the building, however, the subsidiary appreciated it on the basis of factors according to the engineer's report. To the result thus obtained, \$90,278.00, the subsidiary applied a depreciation factor of 1% for the first 10 years and 1/2% for the remainder of the period, ending on December 31, 1960, thereby deriving a value of \$80,000.00 for the building. Generally, the Commission has applied a 2% per annum depreciation rate in determining the values of buildings and improvements under Title V of the Act.

While the Commission recognizes that as a general rule property values have increased, it nevertheless has a statutory duty to determine each claim

on its own merits and not by methods which produce conjectural or speculative results. Apart from the fact that the engineer's report deals in general terms with property values in the United States and not in Cuba, the tables included therein merely represent very general "rules of thumb" obtained on the basis of a study of certain unidentified types of buildings. The record contains no evidence to establish that the subsidiary's building was similar to the ones which were the subject of the engineer's study, and therefore afford no valid basis for applying the suggested factors. Moreover, the record shows that the subsidiary's building was not a new one when it was purchased in 1945, and that all improvements thereto made by the subsidiary occurred between that date and 1950, about twelve years prior to the date of loss. It further appears that the subsidiary computed the total depreciation to be \$11,372.00, whereas its balance sheet of May 31, 1961 shows depreciation in the aggregate amount of \$13,285.94 from December 1946 to December 1960, applied to a total cost of \$48,806.25 for the building.

The subsidiary asserts, on the basis of the engineer's report, that its machinery and equipment in Cuba had a value of \$43,000.00, and that its furniture and fixtures had a value of \$11,000.00. An examination of the evidence of record discloses, with respect to the machinery and equipment, that the aggregate cost thereof to the subsidiary was \$26,234.04, expended between July 1, 1943 and April 30, 1957. It further appears that over \$24,000.00 was expended prior to October 1949, more than twelve years prior to the date of loss. Moreover, the machinery and equipment consisted, for the most part, of small items acquired through many purchases.

With respect to the furniture and fixtures, the record shows that they were purchased between July 1, 1943 and August 30, 1960 for an aggregate

cost of \$6,627.34, and it appears that more than 50% of that amount was expended prior to 1949, or about fourteen years prior to the date of loss. Moreover, the engineer's report, it is noted, does not even mention furniture and fixtures.

Accordingly, the Commission finds no valid basis for applying the suggested factors to the machinery and equipment or to the furniture and fixtures of the subsidiary.

On the basis of all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the subsidiary is that reflected in the balance sheet of May 31, 1961. Accordingly, the Commission finds that the aggregate value of the subsidiary's assets on the date of loss was \$210,674.04.

It appears from the record that the subsidiary was indebted to Cuba for taxes in the amount of \$1,896.08. The Commission has held that in a claim against Cuba under Title V of the Act, an amount due the Republic of Cuba for taxes should be applied in reducing the amount of loss sustained, on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

Accordingly, the Commission finds that the net loss sustained by the subsidiary within the meaning of Title V of the Act was the amount of \$208,777.96.

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 respective dates 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 LANMAN & KEMP-BARCLAY & CO. DE CUBA 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 Two Hundred Eight Thousand Seven Hundred Seventy-seven Dollars and Ninety-six Cents (\$208,777.96) with interest thereon at 6% per annum from April 4, 1962 to the date of settlement.

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

JUN 19 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Feidberg*

~~Sidney Feidberg, 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).)