

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

IN THE MATTER OF THE CLAIM OF

JOSEPH KRESS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0612

Decision No. CU 4214

Counsel for claimant:

Weisstein & Weisstein

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 \$118,281.15, was presented by JOSEPH KRESS, based upon the asserted loss of a stock interest in a Cuban corporation, and for the loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his naturalization on May 3, 1943.

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.

Stock Interest

The evidence establishes and the Commission finds that claimant owned 580 shares of capital stock in Almacenes Amanecer, S.A. The claimant asserts that the above-named enterprise was abandoned in August 1960 as a result of harassment by Cuban Government officials. It appears that similar companies were taken at or about this time. Accordingly, the Commission finds, in the absence of evidence to the contrary, that Almacenes Amanecer, S.A. was intervened on August 15, 1960. Since the Cuban firm was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The subject company was engaged in the business of importing and selling dry goods and textiles.

The company's authorized stock consisted of 2,000 shares of capital stock having a par value of \$100.00. There were outstanding on the date of loss 1,160 shares of capital stock.

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.

The record includes a copy of a financial statement from the records of The Royal Bank of Canada, which reflects the financial status of Almacenes Amanecer, S.A. as of June 30, 1959 and is set forth as follows:

Almacenes Amanecer, S.A.

Assets

Inventory	\$ 144,325.00
Accounts Receivable	76,949.00
Bills Receivable	18,279.00
Cash	8,671.00
Furniture and Fixtures	4,052.00
Deferred Charges	<u>1,165.00</u>
Total Assets	\$ 253,441.00

Liabilities

Trade Paper Discounted	\$ 18,279.00
Bills Payable	16,800.00
Accounts Payable	44,662.00
Partners' Account	<u>2,150.00</u>
Current Liabilities	\$ 81,891.00
Surplus	10,470.00
Due to Partners	45,080.00
Capital Paid Up	<u>116,000.00</u>
Total Liabilities	\$ 253,441.00

On the basis of all the evidence of record, the Commission finds that the value of the assets of Almacenes Amanecer, S.A., at the time of intervention was \$253,441.00, and the corporation's liabilities were \$81,891.00, resulting in a net worth of \$171,550.00. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of capital stock in Almacenes Amanecer, S.A. is \$147.8879.

In the instant claim, the Commission concludes that claimant, as holder of 580 shares of capital stock of Almacenes Amanecer, S.A., suffered a loss in the amount of \$85,774.98 within the meaning of Title V of the Act, as a result of the intervention of Almacenes Amanecer, S.A. by the Government of Cuba on August 15, 1960.

Merchandise

Claim is also asserted for the loss of payment for merchandise shipped to Almacenes Amanecer, S.A. totalling \$4,447.82.

The record includes correspondence from The Royal Bank of Canada dated April 7, 1960 informing the claimant, also doing business as Colonial Export Company, that collections had been paid to it in local currency and that the collecting bank was awaiting exchange control approval.

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 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, in the instant claim the Commission finds that claimant sustained a loss in the total amount of \$4,447.82 as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on April 7, 1960, the date on which payment was acknowledged.

Recapitulation

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock interest in Almacenes Amanecer, S.A.	August 15, 1960	\$85,774.98
Loss of payment for merchandise	April 7, 1960	<u>4,447.82</u>
	Total	\$90,222.80

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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 JOSEPH KRESS 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 Ninety Thousand Two Hundred Twenty-two Dollars and Eighty Cents (\$90,222.80) with interest 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

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 claimant establishes retention of the securities for the loss here certified.

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).)

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