

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

IN THE MATTER OF THE CLAIM OF

LESTER GILFARB

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0729

Decision No. CU 4630

Counsel for claimant:

Norman Sarnoff, Esq.

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 \$604,000.00, was presented by LESTER GILFARB and is based upon the asserted loss of a stock interest in a Cuban corporation and a debt due from the corporation. Claimant has been a national of the United States since September 29, 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 a 50% stock interest in Pan Rubber Manufacturing Corporation, a Cuban entity. This corporation was engaged in selling leather, rubber, fabric and other materials to shoe manufacturers in Cuba. In addition, the corporation tanned leather and processed rubber into heels and soles.

On August 15, 1960, the Cuban Ministry of Labor issued Resolution No. 14531 (pursuant to Law 647 of November 24, 1959) which effected the intervention of the Pan Rubber Manufacturing Corporation, hereafter referred to as Pan Rubber.

Since Pan Rubber was organized under the laws of Cuba it 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. 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 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.

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The question, in all cases, will be to determine the basis of valuation which, under the particular circumstance, 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 evidence includes affidavits from a Cuban attorney and a Cuban accountant based upon personal knowledge of Pan Rubber's operations and assets; an affidavit from a former employee of a Cuban bank corroborating claimant's stock interest in Pan Rubber, and stating that all books and records of Pan Rubber had been left with the Cuban bank; a report from sources abroad; affidavits from others who were also familiar with Pan Rubber's assets; a copy of a balance sheet for Pan Rubber as of August 23, 1960, certified by said Cuban accountant; and statements from claimant to the Department of State and to the Commission concerning this claim.

On the basis of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown by the balance sheet for Pan Rubber as of August 23, 1960.

That balance sheet shows the following, the Cuban peso being on a par with the United States dollar:

<u>ASSETS</u>		
<u>CURRENT ASSETS</u>		
Cash	\$ 15,000.00	
Accounts Receivable	25,000.00	
Inventory	<u>153,000.00</u>	
<u>TOTAL CURRENT ASSETS</u>		\$ 193,000.00
<u>FIXED ASSETS (Net)</u>		
Building	\$200,000.00	
Molds for Rubber Products	220,000.00	
Machinery and Equipment	<u>115,000.00</u>	
<u>TOTAL FIXED ASSETS</u>		535,000.00
<u>OTHER ASSETS</u>		
Patents and Formulas	\$300,000.00	
Additional Land (Near the rubber plant)	75,000.00	
Machinery-Accessories	50,000.00	
Extra Molds and Acc. for Rubber products	<u>55,000.00</u>	
<u>TOTAL OTHER ASSETS</u>		<u>480,000.00</u>
		<u><u>\$1,208,000.00</u></u>

LIABILITIES AND NET WORTH

<u>LIABILITIES</u>		
Accounts Payable	\$145,000.00	
Other Liabilities	25,000.00	
Loans Payable to Officer	<u>50,000.00</u>	
<u>TOTAL LIABILITIES</u>		\$ 220,000.00
<u>NET WORTH</u>		
Capital and Retained Earnings		<u>988,000.00</u>
<u>TOTAL LIABILITIES AND NET WORTH</u>		<u>\$1,208,000.00</u>

The record reflects that the item Accounts Payable of \$145,000.00 was due to Banco Nunez, \$98,000.00 being a long term loan, and \$47,000.00 representing discounted notes from customers.

The aggregate amount of Pan Rubber's assets, \$1,208,000.00, as shown in the balance sheet as of August 23, 1960, agrees with claimant's statement to the Department of State under date of August 23, 1960. On the basis thereof, claimant asserted a loss of \$604,000.00 for his 50% stock interest in Pan Rubber. The record shows that Pan Rubber had expended \$175,000.00 in the development of 23 patents and \$135,000.00 in the development of various types of chemical formulas to be used in its production of rubber soles and heels. The Commission, therefore, finds that the item "Patents and Formulas" in the balance sheet constituted an asset of Pan Rubber on the date of loss and had a value of \$300,000.00.

The Commission finds that the value of Pan Rubber or the excess of its assets over its liabilities on August 15, 1960, the date of loss, was \$988,000.00. Therefore, claimant's 50% stock interest therein had a value of \$494,000.00

DEBT

The Commission has held that debts of nationalized or intervened Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

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The record establishes that the item in the balance sheet, "Loans Payable to Officer", constituted a debt due claimant from Pan Rubber. The Commission, therefore, finds that claimant sustained a loss in the amount of \$50,000.00 for a debt due from an intervened Cuban corporation.

RECAPITULATION

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

<u>ITEM OF PROPERTY</u>	<u>AMOUNT</u>
Stock Interest in Pan Rubber	\$494,000.00
Debt due from Pan Rubber	<u>50,000.00</u>
Total	<u>\$544,000.00</u>


The Commission has decided that in certification of losses on claims determined pursuant to Title V of the Internationals 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.

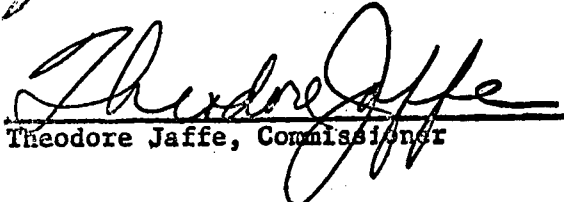
CERTIFICATION OF LOSS

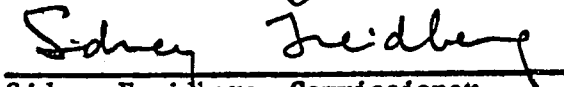
The Commission certifies that LESTER GILFARB suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Forty-Four Thousand Dollars (\$544,000.00) with interest at 6% per annum from August 15, 1960 to the date of settlement.

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

18 MAR 1970


Eric S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)

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