

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

IN THE MATTER OF THE CLAIM OF

PARAMOUNT INTER-AMERICAN FILMS, INC.
PARAMOUNT PICTURES CORPORATION

Claim No. CU-1664

Decision No. CU-6102

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Stuart Kahan, Esq.
E. Compton Timberlake, 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 amended amount of \$714,979.00, was presented by PARAMOUNT INTER-AMERICAN FILMS, INC. and PARAMOUNT PICTURES CORPORATION, and is based upon the asserted loss of film product and for film rentals therefrom, stated to be due and payable under the terms of certain contracts executed by claimants with business enterprises engaged in distributing film product 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

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 evidence discloses that Paramount of Cuba, Inc., a Delaware corporation, dissolved in 1958, was a wholly-owned subsidiary of PARAMOUNT INTER-AMERICAN FILMS, INC., a New York corporation, which was wholly-owned by Paramount International Films, Inc., a Delaware corporation. From 1949 through October 1966, Paramount International Films, Inc. was a wholly-owned subsidiary of Paramount Pictures Corporation, a New York corporation, but in October 1966 Paramount Pictures Corporation was merged into Gulf & Western Industries, Inc., a Michigan corporation. After merger, a new corporation was formed under the laws of Delaware, also known as PARAMOUNT PICTURES

CORPORATION, and all of the assets and liabilities of Paramount Pictures Corporation (New York) were transferred to the Delaware corporation of the same name, a wholly-owned subsidiary of Gulf & Western Industries, Inc.

A corporate official of Gulf & Western Industries, Inc., has certified that at all times pertinent to the claim more than 50% of the outstanding capital stock of this enterprise was owned by nationals of the United States. Further, the official stated that when this claim was filed in April 1967 more than 70% of the outstanding stock of all classes was owned directly or indirectly by nationals of the United States. The Commission finds that Gulf & Western Industries, Inc. and the claimants herein are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

For many years prior to 1958 the claimants utilized the firm of Paramount Films of Cuba, Inc., a wholly-owned subsidiary of PARAMOUNT INTER-AMERICAN FILMS, INC., hereinafter referred to as INTER-AMERICAN, as the distributor of Paramount product in the Cuban territory. The motion picture product was supplied to the enterprise in Cuba by INTER-AMERICAN under an exclusive franchise. The claimants have submitted a list of 136 motion picture productions forwarded to Cuba and assertedly owned by PARAMOUNT PICTURES CORPORATION, hereinafter referred to as PARAMOUNT. This list, prepared at or about the time of dissolution of the firm in Cuba indicates the name or title of the film, number of prints, trailers, and indicates type of film, 35mm or 16mm, and whether the production was in black and white or in color.

In March 1958, INTER-AMERICAN terminated the franchise with its subsidiary, doing business in Cuba, and the subsidiary ceased to distribute motion pictures in the Cuban territory. Thereafter, INTER-AMERICAN entered into agreements with other distributors of motion pictures doing business in Cuba for distribution of Paramount product throughout Cuba, including those film prints on hand in Cuba or prints to be furnished. Thus, the product in question became the subject of contracts between these distributors and then became the subject of contracts with Cuban theatre owners or exhibitors whereby the films were to be exhibited to the public in various Cuban

theatres in that territory. The agreements, discussed more particularly hereafter, generally provided for the eventual return of the prints and for film rentals which were to be earned through the exhibition of the film product, with certain percentages thereof to be determined and forwarded to INTER-AMERICAN.

The prints shipped by INTER-AMERICAN to the Cuban distributors were made from negatives of various productions previously produced by PARAMOUNT or other producers, domestic or foreign, from whom PARAMOUNT or INTER-AMERICAN had secured rights to the prints in question. These prints, apparently shipped to Cuba primarily in the years prior to 1958, had been exhibited or were to be exhibited in various areas or exhibition zones in Havana, other cities in Cuba, or areas throughout the smaller towns and hamlets. The product was in various stages of the depletion cycle, applicable to such product, at the time of loss, as discussed hereafter, with some prints in active use, others in a re-run category, while others had been banned by the Government of Cuba or were to be junked as no longer having utility for exhibition purposes.

The contracts executed by INTER-AMERICAN with Cuban firms, subsequent to the dissolution of the subsidiary operating in Cuba included the following general conditions for distribution of the product in Cuba, with results as discussed hereafter:

1. In April 1958, INTER-AMERICAN sold distribution rights to 32 feature length productions to Distribuidora de Peliculas Europeas, S.A., a Cuban company hereafter referred to as Europeas, for distribution in Cuba. Of the 32 productions thus sold the first 24 were delivered to Europeas and the installments of the purchase price due against delivery was received by INTER-AMERICAN. Import permits were denied by the Government of Cuba with respect to the other 8 productions and these productions were not delivered to Europeas for exhibition in the territory.

2. In 1958-1959, INTER-AMERICAN sold to J. Arthur Rank Overseas Distributors, Ltd., a British company, referred to hereafter as Rank, a total

of 128 "re-issue" features, i.e., full length motion picture productions already exhibited in Cuba, on a percentage basis of the receipts. Between November 1961 and January 1962, 65 of these pictures were banned by the Cuban Institute of Motion Picture Art & Industry, a governmental agency hereafter referred to as ICAIC, under the banning provisions then in force, as set forth in Resolution 119 of the Government of Cuba, dated November 16, 1960. Claimants state that the remaining 63 feature presentations were distributed by the Rank organization until that firm's property was nationalized or otherwise taken by the Government of Cuba on January 1, 1965.

3. In April 1959, INTER-AMERICAN licensed "Hobson's Choice" and "King Richard III" to Compania Operadora de Espectaculos la Rampa, S.A., of Cuba for first run exhibition of these productions in Havana and Marianao on a percentage basis of the receipts.

4. In May 1961, INTER-AMERICAN sold distribution rights of 6 pictures to Europeas for distribution in Cuba on a percentage basis, with the terms of the contract providing that INTER-AMERICAN would provide 8 additional feature presentations, as fillers, consistent with a double feature program.

The evidence discloses that the transactions discussed above covered approximately 140 film productions and the prints, sometimes several of each production, were held in Cuba. The prints were, in part, in the hands of local distributors and exhibitors and in part in vaults rented by INTER-AMERICAN. The claimants have submitted extensive evidence, such as affidavits, lists or inventories and company records concerning the product in question and the ownership of such product by the producer, PARAMOUNT. Based on the evidence of record, the Commission finds that PARAMOUNT was the owner of the film product which that company furnished INTER-AMERICAN for distribution in Cuba. Additionally, the evidence of record discloses and the Commission finds that INTER-AMERICAN was the owner of extensive publicity material or accessories in Cuba, such as photographs, posters and other material utilized in the exploitation of the various productions.

The evidence of record discloses that by Resolution 9, dated December 30, 1964, the Government of Cuba nationalized the properties of Paramount International Films, Inc. and INTER-AMERICAN, pursuant to Law 851, dated July 6, 1960. The evidence also discloses that Rank's properties were also nationalized or otherwise taken by the Government of Cuba on January 1, 1965.

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.

Claim has been asserted herein by INTER-AMERICAN in the amount of \$598,962.00 for loss of the film rentals, or its share of earnings in Cuba, which would ordinarily be received from the distribution in Cuba pursuant to the contracts executed between the parties, as described above. Further, INTER-AMERICAN has asserted a claim for loss of the publicity material in the amount of \$12,250.00, while PARAMOUNT, as the owner of the film product, has asserted a claim in the amount of \$116,015.00 for such loss.

The Commission finds that nondelivery of film product to Cuba, as in the case of Europeas, due to import restrictions, does not constitute a taking within the meaning of Title V of the Act. Further, the Commission finds that the banning of the exhibition of motion pictures by the Government of Cuba is within the discretion of governmental officials and not tantamount to a taking of the product. However, the evidence clearly establishes that the prints

were taken thereafter by the Government of Cuba on or about December 30, 1964, and the value of such prints thus taken from PARAMOUNT is to be determined.

With certain exceptions, noted hereafter, the Commission finds that the evidence of record does not include fiscal reports or similar material which would establish the performance of the parties to the aforesaid contracts or the extent to which the product was actually distributed, exhibited and exploited by the distributors or exhibitors under the general auspices of a revolutionary government. Further, evidence has not been submitted in each instance to establish the exhibition of the product, extent of attendance or box-office receipts, if any, or disposition of such receipts, subject to fiscal restraints by the Government of Cuba. Thus, the Commission finds that with the exceptions discussed below the amount or amounts assertedly accruing to claimant, INTER-AMERICAN, under these contracts is speculative in nature and cannot be ascertained from the evidence of record.

The claimant has submitted evidence, however, such as correspondence and records of the Rank organization, to establish that at the time of the taking of that business enterprise on January 1, 1965, Rank owed INTER-AMERICAN the sum of \$185,976.00 which was included in the records or correspondence of the Rank organization to claimants and others; and that Europeas owed INTER-AMERICAN the sum of \$8,411.00 which was due and payable. In the absence of evidence to establish the date of nationalization or other taking of Europeas, the Commission finds that this firm was taken by Cuba on January 1, 1965. Accordingly, the Commission finds that claimant, INTER-AMERICAN, suffered a loss in the total amount of \$194,387.00 within the scope of Title V of the Act as a result of the taking by the Government of Cuba of the aforesaid Cuban companies on January 1, 1965. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FGSC Semiann. Rep. 62 [July-Dec. 1966].)

The Commission concludes that the claim for the balance of the film rentals, as asserted by INTER-AMERICAN, for other income from the contracts, as described above, is speculative in nature and is hereby denied.

The Commission has considered the portion of the claim asserted for loss of advertising accessories in the amount of \$12,250.00 owned by INTER-AMERICAN and finds that this sum represents a reasonable value of such materials located in Cuba and taken by the Cuban Government on December 30, 1964. The Commission finds that INTER-AMERICAN thus suffered a loss in the total amount of \$206,637.00 within the meaning of Title V of the Act, as a result of the taking of the accounts receivable and film accessories.

This leaves for determination the claim asserted by PARAMOUNT for the film product which was furnished by PARAMOUNT to INTER-AMERICAN, distributed in the Cuban territory and taken by the Government of Cuba.

Officials of the claimants have submitted their affidavits and statements, with cost figures from Technicolor, Pathe and other manufacturers of the prints, indicating the cost of manufacturing film product in the years immediately prior to shipment, including cost per foot of black and white prints, or those in color. These estimates also include incidental charges, such as shipping or custom expenses. Claimants have computed a value of the prints on a replacement or cost when new basis, with incidental charges, but a general depreciation of such product amounting to a one-third reduction has been included; and the total value of the product is asserted to be in the amount of \$116,015.00 at the time of loss.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property, the Commission finds that the most appropriate basis for evaluating the prints at the time of loss is to consider factors concerning cost of manufacture and shipment, as well as depreciation incident to such shipment, exhibition and storage in Cuba. The Commission has considered these factors, including those relating to depreciation of the product, and finds that the reasonable value of the prints is as follows:

196-35mm prints of feature presentations in black and white, at \$150.00 each	\$ 29,400.00
189-35mm prints of feature presentations in color, at \$300.00 each	56,700.00
1007 trailers at \$15.00 each, with miscellaneous advertising accessories	15,105.00

12-16mm prints of feature presentations in black and white, at \$50.00 each	\$ 600.00
18-16mm trailers, black and white, at \$5.00 each	<u>90.00</u>
Total	\$101,895.00

The Commission finds that PARAMOUNT suffered a loss in the amount of \$101,895.00 within the meaning of Title V of the Act when the Government of Cuba seized the film product, subject of this claim.

The Commission holds that prospective film rentals for the period beginning January 1, 1965, are not compensable under the Act. The profits or earnings of the film product in Cuba, after intervention, which may have been realized thereafter did not belong to INTER-AMERICAN or PARAMOUNT since their title or rights thereto were extinguished when the Government of Cuba seized the product. However, claimants are being allowed interest on the value of the property taken by the Cuban Government, as discussed hereafter. Accordingly, the portion of the claim based on film rental or profits for the period following intervention in December 1964 is denied for the reason that the record contains no evidence to show that any profits belonging to the claimants were taken by the Government of Cuba. (See Claim of United Shoe Machinery Corporation, Claim No. SOV-40,353, 10 FCSC Semiann. Rep. at 238; Claim of Aris Gloves, Inc., Claim No. CZ-1170, 17 FCSC Semiann. Rep. 239 [July-Dec. 1962]; and Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225.)

The Commission has decided that in certifications of loss 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:

	<u>FROM</u>	<u>ON</u>
PARAMOUNT INTER-AMERICAN FILMS, INC.		
	December 30, 1964	\$ 12,250.00
	January 1, 1965	194,387.00
PARAMOUNT PICTURES CORPORATION		
	December 30, 1964	\$101,895.00

CERTIFICATIONS OF LOSS

The Commission certifies that PARAMOUNT INTER-AMERICAN FILMS, INC. 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 Six Thousand Six Hundred Thirty-seven Dollars (\$206,637.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that PARAMOUNT PICTURES CORPORATION 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 One Hundred One Thousand Eight Hundred Ninety-five Dollars (\$101,895.00) with interest thereon at 6% per annum from December 30, 1964 to the date of settlement.

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

MAR 11 1971

Lyle S. Garlock
Lyle S. Garlock, Chairman

Theodore Jaffe
Theodore Jaffe, 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 (1970).)

CU-1664