

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

IN THE MATTER OF THE CLAIM OF

ELTRA CORPORATION

Claim No. CU-1705

Decision No. CU -1108

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Francis E. Dorn, Esq.

AMENDED PROPOSED DECISION

This claim was denied by the Commission in a Proposed Decision issued January 31, 1968. Claimant has since amended its claim to \$34,709.22 and has submitted acceptable evidence in support. The matter having been considered, it is

ORDERED that the Proposed Decision be and it is hereby amended.

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 establishes that Mergenthaler Linotype Company was incorporated in New York in about 1895. On October 31, 1960 Davidson Corporation, incorporated in Illinois in 1950, a wholly owned subsidiary of Mergenthaler was liquidated and all its assets, including claim against the Government of Cuba, were distributed to Mergenthaler. By Certificate of Incorporation of June 27, 1967, the Electric Auto-Lite Company, incorporated in Ohio in 1922, was merged into Mergenthaler, which then changed its name to ELTRA CORPORATION.

Claimant corporation, by an authorized officer, has certified as of February 26, 1968 that at no time did non United States national holdings of Mergenthaler and ELTRA stock exceed 1.46 of outstanding shares; and as of July 9, 1968, it has certified that based upon most recent records, non United States national holdings of ELTRA stock approximated 1.41% of the shares outstanding. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of ledger records and correspondence reflecting shipments of goods by Mergenthaler and Davidson to consignees in Cuba. Claimant states that no payment has been received for these goods. The shipments are listed below:

<u>Consignee</u>	<u>Invoice Date or Last Balance</u>	<u>Amount</u>
Graphic Arts Supply - open account	December 7, 1960	\$ 7,025.91
Notes due - to Mergenthaler	December 31, 1962	14,338.20
Customers accounts	December 31, 1962	489.49
Notes due - to Davidson	December 31, 1962	3,258.64
Gutierrez Noriega y Cia.	June 21, 1960	2,057.32
Inter-Relaciones de Medios	August 10, 1960	6,108.03
Marina de Guerra Revolucionaria Arsenal	July 15, 1960	2,967.22
Graphic Arts Supply	October 13, 1959	8.58
	October 23, 1959	124.96
	January 29, 1960	301.73
	February 2, 1960	483.87
	March 1, 1960	743.91
		<u>\$37,907.86</u>

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 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 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's property, in the amount of \$34,940.64 was lost as a result of intervention by the Government of Cuba on the dates shown further below. With respect to \$2,967.22, however, the Commission finds that this debt of the Government of Cuba was due as of August 15, 1960, 30 days from the invoice date. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 58.)

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 claim it is so ordered, as follows:

October 13, 1959	\$ 8.58
October 23, 1959	124.96
January 29, 1960	301.73
February 2, 1960	483.87
March 1, 1960	743.91
June 21, 1960	2,057.32
August 15, 1960	2,967.22
August 10, 1960	6,108.03
December 7, 1960	7,025.91
December 31, 1962	<u>18,086.33</u>
	\$37,907.86

Accordingly, the following Certification of Loss will be entered.


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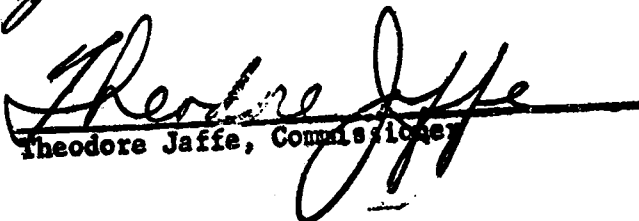
CERTIFICATION OF LOSS

The Commission certifies that ELTRA 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 Thirty-Seven Thousand Nine Hundred Seven Dollars and Eighty-Six Cents (\$37,907.86) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

**MAY 11 1971**

  
Lyle S. Garlock, Chairman

  
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).)

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Claim No. CU -1705

Decision No. CU-1108

Under the International Claims Settlement  
Act of 1949, as amended

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 \$10,284.55, was presented by the ELTRA CORPORATION based upon the asserted loss of a debt owed to it by a Cuban enterprise. Claimant asserts that it is a national of the United States.

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)]<sup>7</sup>, 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 of 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) (Supp. 1967).)

Claimant asserts the loss of a debt owed to it by a Cuban enterprise; however, claimant has submitted no documentary evidence in support of its claim. By Commission letter of July 3, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

On October 4, 1967, claimant was invited to submit any evidence it might have within 45 days from that date, and claimant was informed that, absent such evidence it might become necessary to determine the claim on the basis of the present record. No evidence has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the

Government of Cuba. Accordingly, this claim is hereby denied.

The Commission deems it unnecessary to determine other elements of this claim.

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

**JAN 31 1968**

*Edward S. Re*

Edward S. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

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