

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

IN THE MATTER OF THE CLAIM OF

CHRYSLER CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1945

Decision No. CU -6178

Counsel for claimant:

J. Paul Smith, Esquire

AMENDED PROPOSED DECISION

The Commission issued its Proposed Decision on this claim on April 28, 1971, certifying a loss in the amount of \$844,345.41.

A portion of the decision referred to a bank deposit with the Royal Bank of Canada, Havana Branch, in the amount of \$655,833.57, from which two recoveries were deducted, namely a sum of \$52,202.24 recovered in April 1967, and a sum of \$88,578.41 recovered in May 1968, totaling \$140,780.65, and leaving an unpaid balance of \$515,052.92.

Claimant contends that a misunderstanding has here occurred, because claimant recovered by May 1968 a total of \$88,578.41, leaving an unpaid balance of \$567,255.16, rather than \$515,052.92.

A further portion of the decision referred to a sum of \$231,497.85 paid by claimant's subsidiary to certain employees in Cuba for their furniture and personal belongings. Among these employees was listed one E. M. Kirschke as having received \$13,842.50, while the evidence discloses that this employee received only \$11,592.50, so that the total amount of reimbursements must be reduced from \$231,497.85 to \$229,247.85.

Claimant therefore requested that these two discrepancies be corrected.

Claimant also commented and the Commission hereby takes notice that the correct name of the Secretary of CHRYSLER CORPORATION is A.S. Bond, and not Boyd, and that the correct name of one employee who sold his furniture to claimant's subsidiary is Ivan Iler, and not Iles.

The Commission finds that claimant's request for the correction of the discrepancies is well founded and therefore amends the Proposed Decision by replacing the appropriate paragraphs 1 and 2 on page 4 of the Proposed Decision with the following paragraph:

Claimant's subsidiary was nevertheless able to recover on account of the balance, through certain barter transactions of its branch office in Rotterdam, the sum of \$88,578.41 and the Commission therefore finds that the loss, sustained by claimant through its subsidiary on October 19, 1959 as the result of the actions of the Cuban Government, amounted to \$567,255.16.

The Commission further replaces line 10 on page 7 of the Proposed Decision with the following line:

E.M. Kirschke \$11,592.50 January 16, 1961

The total sum of property reimbursed recited on line 16 of page 7 of the Proposed Decision is therefore \$128,687.35, on line 21 of page 7 \$229,977.85, and on line 23 of page 7 \$229,247.85.

The Commission further replaces the Summary appearing on page 7 of the Proposed Decision with the following:

Summary

Summarizing, claimant is entitled to certification, under the Act, for the following losses, as a result of actions of the Cuban Government:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Bank account	October 19, 1959	\$567,255.16
E.F. Motores S.A.	July 20, 1960	97,794.64
Reimbursements	December 6, 1961	<u>229,247.85</u>
		\$894,297.65

Interest is to be included on the Certification of Loss as follows:

<u>FROM</u>	<u>ON</u>
October 19, 1959	\$567,255.16
July 20, 1960	\$ 97,794.64
December 6, 1961	\$229,247.85

Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed Decision as amended herein is affirmed.

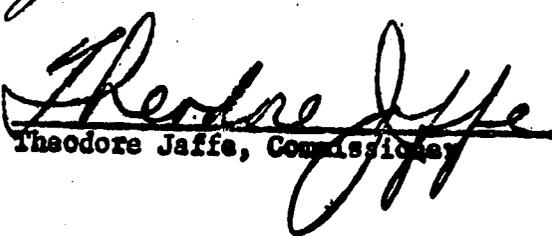
CERTIFICATION OF LOSS

The Commission certifies that CHRYSLER 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 Eight Hundred Ninety-Four Thousand Two Hundred Ninety-Seven Dollars and Sixty-Five Cents (\$894,297.65) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

JUL 14 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 Amended 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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IN THE MATTER OF THE CLAIM OF

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Under the International Claims Settlement
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Claim No. CU - 1945

Decision No. CU - 6178

Counsel for claimant:

J. Paul Smith, 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 original amount of \$957,303.58, was presented by CHRYSLER CORPORATION, based upon asserted losses resulting from actions of the Government of Cuba directed against the property of its wholly owned subsidiary Chrysler International S.A.

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.

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 CHRYSLER CORPORATION was organized on June 6, 1925 under the laws of the State of Delaware. The Secretary of claimant corporation certified that at all times between June 6, 1925, and the presentation of the claim, more than 50 per cent of the outstanding capital stock of all classes of claimant corporation was owned, directly or indirectly, by persons who were United States nationals. Counsel for claimant stated that according to the shareholders records as of December 31, 1970, 1,551,119 shares out of 49,498,879 common shares of CHRYSLER CORPORATION or 3.13% were owned by persons whose addresses were outside of the United States, but included in this category is a number of United States citizens residing abroad. In view of the foregoing the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The property upon which the claim is based, was owned by Chrysler International S.A., a corporation organized under the laws of Switzerland in 1958, with its principal offices in Geneva, Switzerland, and branch offices in London, Rotterdam, Panama and Havana. The record shows that the capital stock of this corporation was 100% owned by CHRYSLER CORPORATION, and that it conducted in Havana the sale and distribution of Chrysler products in Cuba.

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The claim is based on the following losses:

- (1) A bank account on deposit with the Royal Bank of Canada, Havana branch;
- (2) A one-third (1/3) interest of Chrysler International S.A. in E.F. Motores S.A., a Cuban corporation; and
- (3) Reimbursement made by Chrysler International S.A. to their employees for furniture and personal effects left in Cuba and confiscated by the Cuban Government, from Chrysler International S.A.

In support of the claim, claimant has submitted substantial evidence discussed under separate headings below.

Bank Account

Claimant submitted correspondence exchanged between the Royal Bank of Canada of Havana and the Banco Nacional de Cuba, as well as correspondence between Chrysler International S.A. and the Royal Bank of Canada, and affidavits executed by Ian Macintosh, former manager of the Royal Bank of Canada, Vedado branch, in Havana, and A. S. Boyd, Secretary of the CHRYSLER CORPORATION, which show that on October 19, 1959 E. F. Motores S.A., a Cuban corporation, deposited with the Royal Bank of Canada in Havana for the account of the Havana branch of Chrysler International S.A. \$655,833.57. This evidence also shows that E. F. Motores S.A. applied to the Banco Nacional de Cuba for the permission to transfer these funds in United States currency to claimant's subsidiary abroad, in accordance with Cuban Law No. 568. While the Royal Bank of Canada credited the sum of \$655,833.57 to the account of Chrysler International S.A., Havana branch, no permission for the transfer of the funds was granted. The Commission holds that the aforesaid Law No. 568 and its implementation with respect to the rights of claimant's subsidiary was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Cuban Government in the contractual rights of claimant's subsidiary, which resulted in the ultimate 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).

Claimant's subsidiary was nevertheless able to recover on account of the balance, through certain barter transactions of its branch office in Rotterdam, the sum of \$52,202.24 in April 1967, and \$88,578.41 in May 1968, or a total of \$140,789.65.

The Commission therefore finds that the loss, sustained by claimant through its subsidiary on October 19, 1959 as a result of the actions of the Cuban Government, amounted to \$515,052.92.

E.F. Motores S.A.

Claimant states that on November 6, 1958 Chrysler International S.A. purchased 100 shares or one-third of the entire capital stock of E.F. Motores S.A., a Cuban corporation, while the rest of the stock remained in the ownership of Cuban citizens. The principal business of E.F. Motores S.A. was the importation, assembly and distribution of automobiles manufactured by CHRYSLER CORPORATION and of its subsidiaries and affiliated companies.

On the basis of the evidence of record, including an affidavit executed by E. Walter Fernandez, the former president and general manager of E.F. Motores S.A., the Commission finds that claimant's subsidiary Chrysler International S.A. was the owner of 100 shares of 300 outstanding shares of common stock of E.F. Motores S.A. of Havana, Cuba. The Commission further finds that this company was intervened by the Government of Cuba on July 20, 1960.

Since E.F. Motores S.A. 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, supra. In this type of situation, it has been held that an American stockholder who owns the stock directly or indirectly is entitled to file a claim for the value of the 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.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant submitted a balance sheet of E.F. Motores S.A. prepared on May 31, 1960 which shows that the assets of the company, after appropriate deduction for amortization and depreciation were \$388,856.13 while the liabilities amounted to 95,472.22 resulting in the company's net worth of \$293,383.91

Accordingly, the Commission finds that claimant's loss is equivalent to one-third of the net worth or \$97,794.64.

Reimbursement to employees

Claimant states that in 1960 it became apparent that Chrysler International S.A. in Cuba would no longer be able to effectively operate. The management therefore decided to relocate the branch office and to transfer the employees to other places. The Cuban Government, however, refused to allow these employees to remove their furniture and personal effects from Cuba. Chrysler International then decided to reimburse the employees for the furniture and household effects they were forced to leave in Cuba. Claimant further states that 22 employees were involved; that the furniture and household goods were appraised by a competent appraiser in the amount of \$271,747.35; and that subsequently the total amount of the losses was established as \$237,247.85.

In support of this portion of the claim claimant submitted the appraisals made by the firm of Thomas M. McElveen, of Miami, Florida; agreements, bills of sale and releases executed by the employees who sold and surrendered their furniture and household goods to Chrysler International S.A.; claimant further submitted bank statements, cancelled checks and other documents showing that the prices established in the bills of sale were, in fact, paid by Chrysler International S.A.

Based upon these records, the Commission finds that Chrysler International S.A. between December 1960 and March 1961 acquired title to furniture and household goods from the following employees:

	<u>Price</u>
Jack H. Parkinson	\$ 10,634.00
Carlos E. Dominguez	2,972.00
A.F. Buchanan	6,220.00
Joseph G. O'Connell	90.00
Victor V. Montalvo	6,616.00
William E. Mitchell	23,433.50
John W. Mac Arthur	19,829.50
Louis H. Hilbert	9,232.50
Lewis E. Bozek	17,554.00
Ivan Iles	4,434.00
Ruth M. Ross	375.00
Total	<u>\$101,390.50</u>

The evidence further shows that the above amounts were paid in full, with the exception of the amount paid to Lewis E. Bozek, who received only \$16,824.00 or \$730.00 less than agreed upon in the bill of sale.

The Commission holds that the furniture and household goods acquired from the aforementioned employees were subject to Cuban Law No. 989, published in the Official Gazette of December 6, 1961, which effectively confiscated goods and chattels, rights, real property, bonds and other securities of persons who left Cuba. In the absence of evidence to the contrary, the Commission finds that the said personal property was taken from Chrysler International S.A. by the Government of Cuba on December 6, 1961 (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

With respect to the property of the remaining employees, claimant has failed to submit the bills of sales. However, claimant presented the appraisals of the properties in question and evidence of payment made to the individual employees. Based upon the record, the Commission finds that

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payment was made to these employees by Chrysler International S.A., constituting a purchase of property, and assignment of future claims against the Cuban Government for any taking thereof. These payments were as follows:

<u>Name of Employee</u>	<u>Payment made</u>	<u>Date of payment</u>
William W. Westbrook	\$ 15,410.00	December 23, 1960
Giorgio Sagramoso	8,310.00	December 29, 1960
Joseph G. O'Connell	13,535.20	December 29, 1960
Peter Nunez	470.00	January 10, 1961
Raymond Marcum	10,349.90	January 10, 1961
E.M. Kirschke	13,842.50	January 16, 1961
W.L. Hughes	6,233.75	December 20, 1960
B. Holmquist	13,117.00	December 23, 1960
W.H. Collawn	12,505.00	December 29, 1960
Jorge Arteta	20,769.00	December 23, 1960
Robert E. Arras	16,295.00	December 23, 1960
Total	<u>\$130,837.35</u>	

It is noted that one employee, Joseph G. O'Connell, appears on the first list of those who sold their property; but he sold only a part, while the remainder of his property was sold later.

The Commission therefore finds that claimant's subsidiary suffered the following additional losses as purchaser of employees' property	\$232,227.85
less underpayment to Lewis E. Bozek	<u>730.00</u>
Total	\$231,497.85

The claim for reimbursement to the employee Nicholas Schipoff has not been substantiated by any evidence of transfer of title, nor of payment, and this portion of the claim is therefore denied.

SUMMARY

Summarizing, claimant is entitled to certification, under the Act, for the following losses, as a result of actions of the Cuban Government:

<u>Item of property</u>	<u>Date of loss</u>	<u>Amount</u>
Bank account	October 19, 1959	\$515,052.92
E.F. Motores S.A.	July 20, 1960	97,794.64
Reimbursements	December 6, 1961	<u>231,497.85</u>
Total		\$844,345.41

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 as follows:

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<u>FROM</u>	<u>ON</u>
October 19, 1959	\$515,052.92
July 20, 1960	97,794.64
December 6, 1961	231,497.85

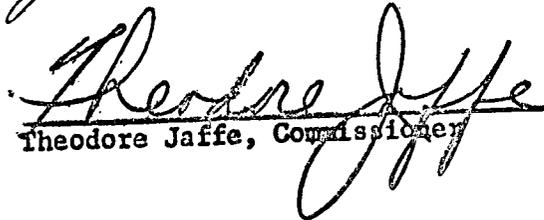
CERTIFICATION OF LOSS

The Commission certifies that CHRYSLER 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 Eight Hundred Forty-Four Thousand Three Hundred Forty-Five Dollars and Forty-One Cents (\$844,345.41) with interest thereon 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

28 APR 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.

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