

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

IN THE MATTER OF THE CLAIM OF

UNIROYAL, INC.

Claim No. CU -3073

Decision No. CU 4488

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Arthur, Dry, Kalish,
Taylor & Wood
By Alan R. Elton, 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 \$119,897.78, was presented by UNIROYAL, INC. and is based upon the asserted loss of property 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 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 claimant, UNIROYAL, INC., formerly known as United States Rubber Company, was organized under the laws of the State of New Jersey and that all pertinent times more than 50% of its outstanding stock has been owned by United States nationals. An officer of the claimant has certified that 1.4 percent of claimant's outstanding capital stock was owned by non-nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based upon the asserted ownership and loss of property in Cuba as follows:

- (1) furniture, personal effects, appliances, and automobiles of employees of claimant's subsidiary, the United States Rubber Co., Ltd., in Cuba;
- (2) legal fees;
- (3) traveling and moving expenses of employees;
- (4) shareholder interest in International Good Service Corporation, S.A.

Contemporary correspondence and other evidence of record establishes and the Commission finds that Albert W. Hollar, Allen J. Krause, Oscar A. Hanson, Leon I. DeSutter, Harold N. Cook, John M. Deres, Otto Losa,

John J. Shaner, C. Eben Smith, John J. Rushford, and G. S. Olson, all nationals of the United States at all times pertinent to this claim, and employees of United States Rubber Co., Ltd., owned furniture, personal effects, appliances, and automobiles in Cuba.

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stock, bonds, bank accounts and other securities of persons who left Cuba. The above-mentioned persons left Cuba before that date. The Commission finds that this law applied to their personal property, and that it was taken on December 6, 1961, by the Government of Cuba. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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.

Based upon the entire record, and considering appropriate depreciation of appliances, furniture, household goods and clothing, the Commission finds that the personal property now in question had a total value of \$54,531.03 on December 6, 1961, the date of its taking by the Government of Cuba.

Subsequent to that date, the claimant reimbursed the named employees for the loss in question and thereby acquired their claims. Accordingly, it is concluded that claimant succeeded to claims within the purview of Title V of the Act in the total amount of \$54,531.03 (see Claim of Pan American World Airways, Inc. Claim No. CU-2576).

A further portion of the claim is based upon legal fees incurred in pursuing the rights of United States Rubber Co., Ltd., in Cuba, in the amount of \$6,546.36, and upon payment to employees of that Company for traveling and moving expenses incurred by them in leaving Cuba, in the amount of \$37,845.12.

In considering these portions of the claim, the Commission must determine whether such losses are certifiable under Title V of the Act.

Section 501 of the Act states:

It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba which have arisen since January 1, 1959, out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, . . .

This Section and Section 503(a) of the Act, supra, both refer to losses from the taking of property. The basis, however, of these parts of the claim is not for property taken by the Government of Cuba but for losses resulting from other actions of that Government. The Commission, therefore, finds that these items of claim are not within the purview of Title V of the Act (see Claim of Cuban Electric Company, Claim No. CU-2578). Accordingly, these portions of the claim are denied.

The remaining portion of the claim is based upon the asserted loss of claimant's investment in the International Good Service Corporation, S.A. (hereafter referred to as IGESE), a corporation organized under the laws of Cuba.

The evidence of record shows that claimant paid 6,975.27 pesos for IGESE's net worth and 15,000.00 pesos for goodwill, a total of 21,975.27 in

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in 1958, of which 4,369.28 pesos were refunded by the seller upon the discovery that at the time of the sale IGESE's net worth was 2,605.99 pesos only.

The record also contains balance sheets of IGESE, the most recent one indicating IGESE's financial condition on July 31, 1960, in Cuban pesos as follows:

Assets

Cash	6,921.02
Accounts Receivable	
Customers	80,504.44
Miscellaneous	7,524.58
Employees	478.20
Finished Goods	18,132.13
Properties, Plants &	
Equipment, less Depreciation	9,241.36
Prepaid and Deferred Charges	<u>11,180.89</u>
	133,982.62

Liabilities

Notes Payable to Banks	10,000.00
Accounts Payable	16,239.43
Taxes	545.98
Other Accrued Liabilities	1,548.93
Accounts Payable to U.S.	
Rubber Co., Ltd., Havana	107,942.99
Capital Stock	25,000.00
Total Earned Surplus	<u>(27,294.71)</u>
	133,982.62

From this balance sheet it is apparent that on July 31, 1960, IGESE already lost its entire capital of 25,000.00 pesos and was insolvent. There is no evidence to indicate that IGESE regained its solvency and had a value on March 8, 1961, the date when it was intervened by the Government of Cuba. Accordingly, the portion of the claim which is based upon claimant's investment in IGESE is denied. (see Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887).

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.

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CERTIFICATION OF LOSS

The Commission certifies that UNIROYAL, INC. sustained a loss, as a result of actions by the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Four Thousand Five Hundred Thirty-One Dollars and Three Cents (\$54,531.03) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement.

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

12 FEB 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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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