

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

IN THE MATTER OF THE CLAIM OF

GENERAL MOTORS CORPORATION
and
GENERAL MOTORS ACCEPTANCE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3088

Decision No. CU 5844

Counsel for Claimant:

Ross L. Malone, 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 amended amount of \$5,100,579.86, was presented originally by the GENERAL MOTORS ACCEPTANCE CORPORATION. Inasmuch as the record shows that the original claimant is merely the duly authorized attorney-in-fact for the GENERAL MOTORS CORPORATION with respect to all but a small portion of the claim, the real party in interest has been added as claimant to that extent. The major part of the claim is based upon the asserted loss of certain debts in the amount of \$5,098,809.00. A small portion of the claim in the amount of \$1,770.86, asserted by the original claimant on its own behalf, is based upon the assignment of a claim against the Government of Cuba by one of its employees.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (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 the original claimant was organized under the laws of New York, and that at all pertinent times all of its outstanding capital stock was owned by the GENERAL MOTORS CORPORATION, organized under the laws of Delaware. A duly authorized officer of the GENERAL MOTORS CORPORATION has certified that as of March 22, 1968, 98.8% of its outstanding capital stock was owned by nationals of the United States. (See Claim of General Motors Corporation, Claim No. CU-3087.) The Commission holds that the GENERAL MOTORS CORPORATION and the GENERAL MOTORS ACCEPTANCE CORPORATION, hereafter called the parent and the subsidiary, respectively, are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

GENERAL MOTORS CORPORATION

The evidence establishes that pursuant to certain agreements executed on October 1, 1954, the Cuba Railroad Company and the Cuba Northern Railways Company acquired possession of substantial amounts of railroad equipment from the parent. The two railroads agreed to make certain initial payments with interest at the annual rate of 4% until February 15, 1956, and thereafter to make certain annual payments at the same rate of interest on February 15 of each year until the underlying debts were fully liquidated.

The Chase National Bank of the City of New York, now known as the Chase Manhattan Bank, N.A., was designated to hold title to the railroad equipment in the capacity of trustee, to collect principal and interest from the two railroads on the specified dates, and to make appropriate payments to the parent. The trustee was required to issue Trust Certificates in denominations of \$1,000.00 or multiples thereof, each of which certificates was to "represent an interest to the amount of the principal amount thereof in the trust of the Trust Equipment hereby created." (Article II, Section 1 of the trust agreements of October 1, 1954.) In the event of default with respect to the terms of accompanying leases, the trustee was empowered under certain conditions to repossess the railroad equipment and to sell it to satisfy the unpaid debts. (Article IV, Section 2 of the trust agreements of October 1, 1954, and the Sixth paragraph of the accompanying leases of the same date.)

In effect, therefore, the parent owned a proprietary interest in the railroad equipment to the extent of the unpaid debts, and held liens on the property to the same extent.

On October 13, 1960, the Government of Cuba nationalized the properties of the two railroads, including the said railroad equipment, pursuant to Law 890. (See Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339, and Claim of Edgar F. Corliss, Claim No. CU-0785.) It is concluded that the parent thereby sustained a loss within the meaning of Title V of the Act. (See Kentucky and Corliss, supra.)

The evidence establishes and the Commission finds that on October 13, 1960, the date of loss, the principal amounts of the unpaid debts were \$2,940,000.00 due from the Cuba Railroad Company, and \$630,000.00 due from the Cuba Northern Railways Company. It further appears from the evidence of record that the two railroads had last paid interest on their obligations at the contract rate of 4% per year on February 15, 1959. The Commission therefore finds that on the date of loss the two railroads also owed the parent interest in the amounts of \$194,858.00 and \$41,790.00, respectively. Accordingly, the aggregate loss sustained by the parent was \$3,806,648.00, representing \$3,134,858.00 due from the Cuba Railroad Company and \$671,790.00 due from the Cuba Northern Railways Company.

GENERAL MOTORS ACCEPTANCE CORPORATION

The subsidiary has submitted a copy of an assignment, dated June 26, 1961, pursuant to which Maxie F. Klemke, a former employee at the subsidiary's branch in Cuba, assigned his claim against the Government of Cuba arising out of the asserted taking of his personal property. Said property is described as follows in the assignment:

1957 Chevrolet Model 2102-8	\$1,165.00
Bank Account at the First National City Bank of New York, Vedado, Havana Branch	117.00
Sales Proceeds of Assignor's Appliances	<u>488.86</u>
Total	\$1,770.86

The evidence establishes that the former employee has been a national of the United States since birth. It further appears that he left Cuba shortly after October 13, 1960 when the property in question was nationalized by Cuba, and that the employee's personal property, having a value of \$1,770.86, was taken by the Government of Cuba after he left

Cuba and prior to the assignment of June 26, 1961. In the absence of evidence to the contrary, the Commission finds that the employee's property was taken by Cuba on December 15, 1960, and that the GENERAL MOTORS ACCEPTANCE CORPORATION succeeded to his claim in the amount of \$1,770.86.

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.

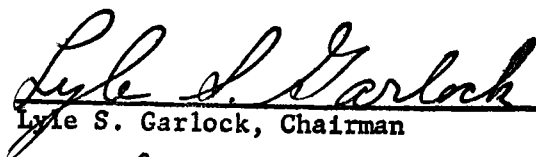
CERTIFICATION OF LOSS

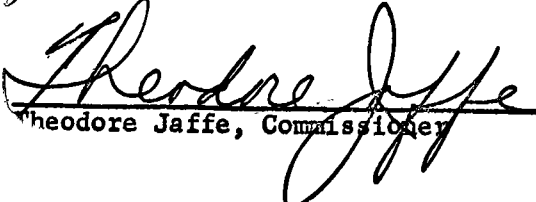
The Commission certifies that the GENERAL MOTORS CORPORATION suffered a loss, as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Million Eight Hundred Six Thousand Six Hundred Forty-Eight Dollars (\$3,806,648.00) with interest at 6% per annum from October 13, 1960 to the date of settlement; and

The Commission certifies that GENERAL MOTORS ACCEPTANCE CORPORATION succeeded to and 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 Thousand Seven Hundred Seventy Dollars and Eighty-Six Cents (\$1,770.86) with interest at 6% per annum from December 15, 1960 to the date of settlement.

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

SEP 16 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The Commission has entered a certification of loss in favor of the GENERAL MOTORS CORPORATION in connection with Claim No. CU-3087.

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).)

CU-3088