

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

IN THE MATTER OF THE CLAIM OF

F. W. WOOLWORTH CO.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1319

Decision No. CU

3713

Counsel for claimant:

Davies, Hardy, Loeb, Austin & Ives  
By John K. Armstrong, 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 \$9,575,689.00, was presented by F. W. WOOLWORTH CO., based upon the asserted loss of certain real and personal 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.

Claimant corporation, by an authorized officer, has certified that claimant was organized in New York, and that at all pertinent times more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States. Said officer has also certified that out of 9,749,955 shares outstanding in 1963, prior to a 3 for 1 stock split in 1964, 404,805 shares were owned by stockholders who had registered addresses located outside the United States. Thus, less than 5% of the outstanding shares of capital stock of claimant are assumed to have been held by nationals of countries other than 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 record shows that claimant operated a chain of 11 retail stores in various areas of Cuba as well as a principal office, in Havana, which supervised the activities of the stores and performed other related functions including the maintenance of books and records. Each store was assigned a number for identification.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized F. W. WOOLWORTH COMPANY. The Commission finds that all of claimant's properties, discussed in detail below, were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Under date of May 12, 1969, claimant requested through counsel that the portion of its claim for certain securities of the Cuban Electric Company in the amount of \$28,361.00 be withdrawn. This matter having been duly considered by the Commission, it is

ORDERED that the request be and the same is hereby granted.

The evidence includes the following:

1. Affidavits from the managers of each of the 11 stores as well as the manager of the principal office, who have personal knowledge of the assets maintained at each location. Each affidavit is accompanied by a statement of the assets at the location in question, prepared on the basis of a physical inventory taken on December 31, 1959, and another statement showing the value of the assets on the date of loss by appropriate adjustments for the period following the date of the physical inventory;
2. Weekly cash reports prepared by these managers, showing the amounts of cash on hand at each store on the date of loss or on dates very close to the date of loss;
3. Copies of monthly trial balances for each store based upon claimant's books and records, covering the period January through October 1960, with the exception of April;
4. Copies of bank statements and certificates of deposit;
5. Copies of leases and related agreements;
6. Schedules prepared from pertinent books and records including those maintained by the managers, showing with respect to each store and the principal office, the amounts of cash on hand; cash in banks; debts due from Cuban nationals who were claimant's lessors at one of its stores; merchandise inventories; operating supplies; net values of fixtures and equipment after appropriate deductions for depreciation; amounts expended for capital or major alterations at claimant's leased stores appropriately amortized; as well as a deed for and a schedule showing the value of real property owned by claimant in which one of its stores was located, likewise depreciated, so that the values of the foregoing assets reflect those as of the date of loss;
7. Copy of a certificate evidencing that claimant owned 142 shares of stock of Ferrocarriles Occidentales de Cuba, S.A., a Cuban corporation;

8. Copies of leases with respect to store Nos. 1712 and 1819, pursuant to which claimant constructed buildings on the premises in 1956; and

9. Statements from officials of claimant concerning this claim.

Claimant has computed its claim as follows:

Cash on hand	\$ 69,470.00
Cash in banks	3,923,549.00
Receivables	37,111.00
Merchandise inventories	1,584,998.00
Operating supplies	102,682.00
Net fixtures after depreciation	1,316,092.00
Net equipment after depreciation	136,940.00
Alterations and leaseholds	2,397,699.00
Real property	<u>35,509.00</u>
Total	\$9,604,050.00
Withdrawn	<u>28,361.00</u>
Total amount claimed	<u>\$9,575,689.00</u>

On the basis of all the evidence of record, the Commission finds that the values of claimant's assets in Cuba on October 24, 1960, the date of loss, were as follows:

Cash on hand	\$ 69,470.38
Cash in banks	3,933,357.56
(Of this amount, \$9,802.75 had been added by claimant to "Receivables" of \$27,308.00 to arrive at the amount of \$37,111.00, rounded off. The record shows that \$9,802.75 was owed by claimant to foreign suppliers who had sold goods to claimant's Cuban stores. Claimant had attempted to use its bank account to pay this debt, but Cuba refused to allow funds to flow outside Cuba. Subsequently, claimant paid these suppliers on demand through its main office in the United States. Since claimant's latest records show this amount deducted from its bank balances, it has been added thereto in the foregoing asset "Cash in banks" to reflect the true picture on the date of loss.)	
Debt due from Cuban nationals	27,308.00
Merchandise inventories	1,584,998.00
Operating supplies	102,682.00
Net fixtures after deduction for depreciation	1,316,092.00

Net equipment after deduction for depreciation	\$ 136,940.00
Major alterations and improvements at leased premises, amortized appropriately (This includes expenses of an organizational nature. The record shows, however, that these organizational expenses included items such as freight on fixtures and equipment for building and altering the premises in question; salaries of supervisors during alterations; expenses involved in acquiring the lease; and rent paid for the location prior to commencement of operations. The Commission finds that these items enhanced the value of the alterations and should be included as claimant's assets which were lost as a result of the nationalization by the Government of Cuba. It also includes the sum of \$546,420.00, representing the unamortized cost of erecting buildings in 1956 to house its stores, numbered 1712 and 1819, pursuant to long-term leases. These leases provided for periods ending in 1996 and 1986, respectively, with an option granted to claimant to extend the leases for further ten-year periods. The Commission finds that while the buildings did not belong to claimant, the leaseholds, which included the use of the buildings during the long terms of the leases, constituted property within the meaning of Section 502(3) of the Act, and were lost as a result of the nationalization by the Government of Cuba. The Commission finds that the valuation most appropriate to the leaseholds and equitable to the claimant is the unamortized expenditures incurred by claimant in erecting the buildings; namely, \$546,420.00 (Section 503(a).))	2,397,699.00
Improved real property less deduction for depreciation	35,509.14
142 shares of Ferrocarriles Occidentales de Cuba, S.A., at \$100.00 per share (see <u>Claim of Ruth Anna Haskew</u> , Claim No. CU-0849.)	<u>14,200.00</u>
Total	<u>\$9,618,256.08</u>

It is noted that on the date of nationalization, the peso was on a par with the United States dollar.

The record contains, as noted above, the affidavit of the manager of claimant's principal office in Havana, accompanied by a statement, dated December 31, 1959, which shows a debt owed by claimant to the Government of Cuba, on account of Cuban income taxes, in the amount of \$430,000.00. The

second statement attached to that affidavit shows claimant's assets at its principal office as of the date of loss. Although the latter statement reports miscellaneous liabilities in the amount of \$8,685.00, it fails to mention the debt due for Cuban income taxes. An examination of the December 31, 1959 statement shows an item called "Accounts payable trade" in the amount of \$4,452.63, which apparently is the same account as miscellaneous liabilities as of the date of the loss, adjusted for the period following December 31, 1959. A study of the various entries in the December 31, 1959 and later statements indicates no great reductions in cash on hand or cash in the bank accounts which might indicate that the Cuban income taxes had been paid subsequent to December 31, 1959. On the contrary, the account, cash in banks, for claimant's principal office shows the amount to be \$2,204,109.13 as of December 31, 1959 and \$3,567,009.00 as of the date of loss, or an increase of \$1,362,899.87. Moreover, there is no indication in the record that this debt to Cuba was paid in part or in whole. In the absence of evidence to the contrary, the Commission finds that claimant owed a debt to Cuba for taxes in the amount of \$430,000.00 on the date of loss.

The Commission has held that in a claim against Cuba under Title V of the Act, any amount due Cuba for taxes should be applied in reducing the amount of loss sustained, on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

Accordingly, the Commission finds that the net loss sustained by claimant within the meaning of Title V of the Act was the amount of \$9,188,256.08.

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 F. W. WOOLWORTH CO. 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 Nine Million One Hundred Eighty-eight Thousand Two Hundred Fifty-six Dollars and Eight Cents (\$9,188,256.08), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

JUN 19 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)