

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

IN THE MATTER OF THE CLAIM OF

WARNER BROS., INC.  
WARNER BROS. (SOUTH), INC.

Claim No. CU -1765

Decision No. CU -6195

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$916,286.00, was presented by Warner Bros. First National South Films, Inc., now known as WARNER BROS. (SOUTH), INC., and is based upon the asserted loss of film product, anticipated film rentals, the loss of the assets of a branch office in Cuba and a debt of a nationalized Cuban enterprise.

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.

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) (1970).)

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.

This claim was filed on April 24, 1967, by Warner Bros. First National South Films, Inc., a Delaware corporation. Subsequent to filing claim, the name of claimant was changed to Warner Bros. Seven Arts (South), Inc., and it is now known as WARNER BROS. (SOUTH), INC., and such predecessor or successor corporation is hereinafter referred to as claimant or WARNER-SOUTH. At the time of the asserted loss, WARNER-SOUTH was a wholly-owned subsidiary of Warner Bros. Pictures International Corporation, later known as Warner Bros. Seven Arts International Corporation, a Delaware corporation, hereinafter referred to as Warner-International. The outstanding stock of Warner-International was previously owned solely by Warner Bros. Pictures, Inc., now known as WARNER BROS., INC., a Delaware corporation. However, the evidence also discloses that additional corporate changes have been made, including a change of ownership and transfer of all outstanding shares of stock of

WARNER-SOUTH to WARNER BROS., INC., hereinafter referred to as WARNER; and Warner-International has been reorganized from a separate enterprise or subsidiary corporation of WARNER to become a divisional organization or branch functioning under WARNER.

An official of WARNER has certified that at the time of filing this claim at least 75% of the stock of Warner Bros. Pictures, Inc., predecessor of WARNER, was owned by nationals of the United States. The Commission finds that at the time of filing claim WARNER and its former subsidiary, Warner-International, as well as WARNER-SOUTH, were nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The claimant, WARNER-SOUTH, has asserted that at all times pertinent to this claim, the predecessor of WARNER, then Warner Bros. Pictures, Inc., owned the film product or prints in Cuba which are in part the subject of this claim. Accordingly, the Commission has amended this claim to include WARNER, the successor of Warner Bros. Pictures, Inc., as a claimant in this matter.

For many years prior to the asserted date of loss of the property, subject of this claim, WARNER produced and furnished film product to Warner-International for distribution throughout the world; and to WARNER-SOUTH for distribution in areas south or near the United States. WARNER-SOUTH, pursuant to Deed #175, dated June 16, 1936, as duly recorded in folio 252, book 20, operated in Cuba as a branch office to distribute WARNER product in the Cuban territory. Thereafter, the film product was distributed in the Cuban territory as the subject of contracts between the branch office of WARNER-SOUTH and the Cuban theatre owners or exhibitors. The motion picture productions were exhibited to the public in various theatres in the Cuban territory whereby film rentals were earned by the branch office for the producers or distributors of WARNER product.

The claimants have submitted, among other things, company records showing shipment of product to Cuba and an inventory of film product in Cuba assertedly taken by the Government of Cuba from WARNER-SOUTH. The inventory includes the various types of film prints which were the subject of distribution and

exhibition contracts and included WARNER product or other prints to which rights had been acquired by claimants herein. The inventory included 35mm prints such as 371 feature presentations, 1168 trailers and 149 short subjects, in black and white and in color; and the 16mm product included 331 prints of various types, including trailers. Based on the aforesaid evidence of record, as well as affidavits and company records submitted by officials of the claimants, the Commission finds that WARNER was at all times pertinent to this claim the owner of the said film product, further itemized hereafter.

The Commission finds that the branch office of WARNER-SOUTH, known in Cuba as Compania del sur de Peliculas Hermanos Warner, was taken by the Government of Cuba pursuant to Resolution 2868, published by Cuban authorities in the Official Gazette on May 10, 1961, and the Commission further finds that the film inventory of WARNER was taken at that time.

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

The prints shipped to Cuba by WARNER-SOUTH were made from negatives of various productions previously produced by WARNER or other producers, domestic or foreign, from whom WARNER or WARNER-SOUTH had secured rights to the prints in question. These prints, apparently shipped to Cuba primarily in the period from 1953 to 1960, had been exhibited or were to be exhibited in various areas or exhibition zones in Havana, other cities in Cuba, or areas

throughout the smaller towns and hamlets. Thus, the product was in various stages of the depletion cycle, applicable to such product, at the time of loss, with some prints apparently to be released or in active use in the aforesaid exhibition zones, others in a re-run category, while others were to be junked as no longer having utility for exhibition purposes.

Officials of the claimants have submitted their affidavits and statements, with cost figures from Technicolor, Pathe and other manufacturers of the prints, indicating the cost of manufacturing film product in the years immediately prior to loss, including cost per foot of black and white prints, or those in color, along with incidental charges, such as shipping or custom expenses. Claimants have computed a value of the prints on a replacement or cost when new basis, with incidental charges added thereto; and the total value of the product in Cuba was asserted to be in the approximate amount of \$200,000.00 at the time of loss.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the most appropriate basis for evaluating the film product at the time of loss is to consider factors relating to cost of manufacture and shipment, as well as depreciation incident to the shipment, exhibition and storage of the product in Cuba. The Commission has considered these factors, including those relating to depreciation of the film products, and finds that the reasonable value of the prints is as follows:

<u>Recapitulation</u>				
<u>Type of Print</u>	<u>Number of Prints</u>	<u>Average Footage</u>	<u>Depreciated Value Per Print</u>	<u>Total Value</u>
<u>35mm Features</u>				
Black and White	258	10,000	\$150.00	\$ 38,700.00
Color	113	10,000	300.00	33,900.00
<u>Shorts</u>				
Black and White	108	1,300	35.00	3,780.00
Color	41	1,300	50.00	2,050.00

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<u>Type of Print</u>	<u>Number of Prints</u>	<u>Average Footage</u>	<u>Depreciated Value Per Print</u>	<u>Total Value</u>
Trailers, 35mm	1168	300	15.00 <sup>1/</sup>	\$ 17,520.00
<u>16mm Features</u>				
Black and White	100	4,000	50.00	5,000.00
Color	3	4,000	100.00	300.00
<u>Shorts</u>				
Black and White	143	520	15.00	2,145.00
Color	9	520	15.00	135.00
Trailers, 16mm	76	120	5.00 <sup>1/</sup>	<u>380.00</u>
Total				\$103,910.00

<sup>1/</sup> Average value per print, black and white or in color.

The Commission finds that WARNER suffered a loss in the amount of \$103,910.00 within the meaning of Title V of the Act when the Government of Cuba seized the film product on May 10, 1961.

As indicated above, WARNER-SOUTH also suffered a loss when the Government of Cuba seized its branch office in Cuba on May 10, 1961. WARNER-SOUTH has submitted evidence pertaining to the value or assets of the Cuban branch office, including affidavits and a certified balance sheet, dated March 27, 1961, which was prepared immediately before the date of loss; as well as trial balances and profit and loss statements. Claimant has also submitted supplementary information with respect to the assets and liabilities of the branch office including banking statements, statements of accounts due and payable, showing not only assets but certain taxes due and payable and a debt payable by the claimant branch office to Warner-International at the time of loss.

The balance sheet of WARNER-SOUTH, dated March 27, 1961, reflects the following (the peso being on a par with the dollar):

Assets

Cash	\$204,738.27
Trade accounts receivable	35,622.17
Raw film, accessories	282.05
Deposits to secure contracts	300.00
Miscellaneous investments	1,300.00
Property and equipment	185.40
Deferred charges	<u>708.10</u>
Total assets	\$243,135.99

Liabilities

Accounts payable	\$ 1,465.66
Sundry accruals	3,170.57
Royalties payable	308.75
Advance payments, deposits	4,372.19
Account with affiliated company	
Warner Bros. Pictures Int. Corp.	291,005.16
Warner Bros. F.N.S.F., Inc.	(75,378.60)
Total earned surplus	<u>18,192.26</u>
 Total liabilities	 \$243,135.99

The Commission has carefully considered all of the evidence of record, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, WARNER-SOUTH, and concludes that the balance sheet of March 27, 1961, is the most appropriate basis of valuation of the branch office of WARNER-SOUTH, then known as Warner Bros. First National South Films, Inc., at the time of loss in 1961. This evidence shows that the assets of the branch doing business in Cuba at the time of loss were in the total amount of \$243,135.99.

The Commission finds that WARNER-SOUTH has succeeded to all of the assets of the branch office of the predecessor in interest and has also assumed the obligations of that enterprise. By virtue of these circumstances and the fact that the Cuban branch was not a legal entity organized under the laws of Cuba, the Commission will not deduct any of the outstanding liabilities in determining the amount of loss sustained within the meaning of Title V of the Act. However, taxes payable to the Government of Cuba by claimant's predecessor are distinguishable from other liabilities inasmuch as this is a claim against the Government of Cuba. The Commission finds that the losses of WARNER-SOUTH must be offset by the sum of \$3,170.57, the amount of taxes owed to the Government of Cuba by the branch office on the date of loss. (See Claim of Simmons Company, Claim No. CU-2303.)

The Commission finds that the adjusted value of the assets of the branch office is in the amount of \$239,965.42 and that WARNER-SOUTH succeeded to the loss of Warner Bros. First National South Films, Inc., and sustained a loss in that amount within the meaning of Title V of the Act for this portion of the claim.

The evidence of record discloses that in October 1951 Warner Bros. First National South Films, Inc., predecessor of WARNER-SOUTH, executed an Agreement with Circuito CMQ, S.A. and the Mestre Brothers whereby rights and interests to the Warner Theatre, located at the Radiocentro building complex in Havana would be sold to a newly formed corporation known as Circuito Teatral Radiocentro, S.A., a Cuban corporation. Payments were made pursuant to the contract of sale whereby the principal amount of \$108,000.00 was reduced to \$41,250.62, as of April 2, 1960. On October 14, 1960, pursuant to the Urban Reform Law, the property was seized by the Government of Cuba and the sole assets of the buyer were thus taken on that date. The Commission holds that these circumstances were tantamount to a nationalization of the enterprise Circuito Teatral Radiocentro, S.A.

Accordingly, the Commission finds that the balance of \$41,250.62 was due and payable to the predecessor of WARNER-SOUTH and was an indebtedness of Circuito Teatral Radiocentro, S.A. at the time of nationalization or other taking on October 14, 1960. The Commission has consistently held that claims based upon debts of nationalized enterprises in Cuba are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Thus, the Commission finds that WARNER-SOUTH succeeded to and suffered a loss in the amount of \$41,250.62 within the meaning of Title V of the Act on October 14, 1960, the date of loss.

WARNER-SOUTH has asserted claim for loss of prospective earnings or film rental income which might have been realized had not the Government of Cuba seized the film product in May 1961. Claimant contends that the prints, aside from the physical attributes, as discussed above, contained a series of images on the film which not only were unique in nature but were the primary things of value as the subject of the contracts between claimants and those contracts executed between the branch office of WARNER-SOUTH and the exhibitors or theatre owners in the Cuban territory.



The prints, discussed above, were owned by WARNER and were the subject of distribution contracts between WARNER, Warner-International and WARNER-SOUTH for distribution throughout the world, including Cuba. The agreements for exhibition of the product in Cuba were apparently made on "block booking" arrangements with the Cuban exhibitors whereby contracts were made for the product several weeks in advance. Such agreements assertedly provide for the booking and exhibition by the theatre owners of several feature presentations, with fillers or short subjects, which were to be furnished by the distributors. Film rentals or income, ordinarily distributed according to contract between the parties, ceased upon seizure of the prints by the Government of Cuba.

The Commission has carefully considered the claim asserted for loss of anticipated film rental income had not the Government of Cuba intervened. However, claims based on the loss of prospective earnings are generally not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration", and goes on to say:

"This award (in the Alabama case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

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"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage. \*\*\* Domestic commissions have reached the same conclusion without specific direction from Congress."

The Commission finds that the portion of the instant claim based on prospective film rentals for the period beginning May 10, 1961, is not compensable under the Act. The profits or earnings of the branch office

in Cuba, if any, which may have been realized during the period in question did not belong to the claimants since their title in and to the branch office and to the film product was extinguished when the Government of Cuba intervened. However, claimants are being allowed interest on the value of the property taken by the Cuban Government, as discussed hereafter. Accordingly, the portion of the claim based on film rental or profits for the period following intervention on May 10, 1961, is denied for the reason that the record contains no evidence to show that any profits belonging to the claimants were taken by the Government of Cuba. (See Claim of United Shoe Machinery Corporation, Claim No. SOV-40,353, 10 FCSC Semiann. Rep. at 238; Claim of Aris Gloves, Inc., Claim No. CZ-1170, 17 FCSC Semiann. Rep. 239 [July-Dec. 1962]; and Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225.)

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.

<u>FROM</u>	<u>ON</u>
WARNER BROS., INC.	
May 10, 1961	\$103,910.00
WARNER BROS. (SOUTH), INC.	
October 14, 1960	\$ 41,250.62
May 10, 1961	<u>239,965.42</u>
	\$281,216.04


CERTIFICATIONS OF LOSS

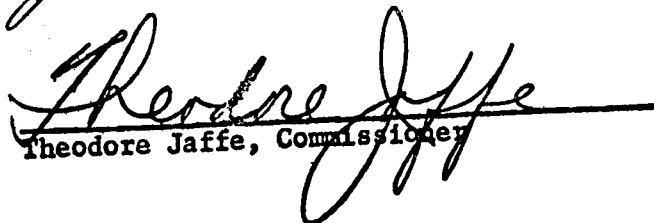
The Commission certifies that WARNER BROS., INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Three Thousand Nine Hundred Ten Dollars (\$103,910.00) with interest thereon at 6% per annum from May 10, 1961 to the date of settlement; and

The Commission certifies that WARNER BROS. (SOUTH), INC. 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 Two Hundred Eighty-one Thousand Two Hundred Sixteen Dollars and Four Cents (\$281,216.04) with interest 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

MAY 19 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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