

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

IN THE MATTER OF THE CLAIM OF

WESTERN UNION INTERNATIONAL, INC.
and
THE WESTERN UNION TELEGRAPH CO.

Claim No. CU-2317

Decision No. CU-6224

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered June 16, 1971;
oral hearing requested.

Oral argument September 2, 1971 by Roger P. Newell, Esq.

FINAL DECISION

Under date of June 16, 1971 the Commission issued a Proposed Decision on this claim certifying losses of claimant, WESTERN UNION INTERNATIONAL, INC. (WUI) in the amount of \$780,631.20 based on the going concern value of its Cuban operations. In this regard the Proposed Decision held that the loss of buildings and personalty did not constitute liquid assets to be considered as additional factors in determining overall value.

Upon consideration of the entire record including the new evidence submitted, the Commission now finds that only 1/3 of the building in question was utilized for telegraph operations, the remainder being leased to tenants unrelated to the business. The Commission further finds that the value of the building on the date of loss was \$238,104.00, and that in view of the foregoing the Commission concludes that the overall value of WESTERN UNION INTERNATIONAL, INC. will be increased by \$158,736.00, the value of two-thirds of the building.

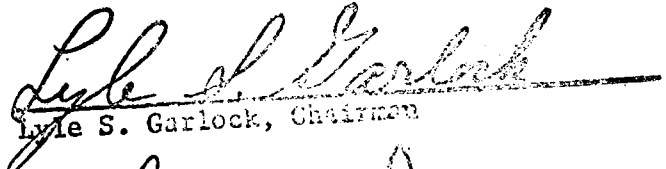
Accordingly, the Certification of Loss in the Proposed Decision for WESTERN UNION INTERNATIONAL, INC. is set aside. The following Certification of Loss will be entered for WESTERN UNION INTERNATIONAL, INC. and the Proposed Decision as amended herein including the Certification of Loss for THE WESTERN UNION TELEGRAPH CO. is affirmed in all other respects.

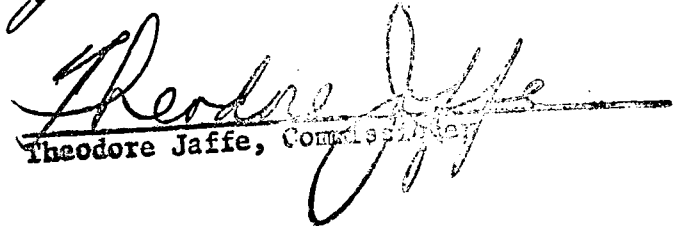
CERTIFICATION OF LOSS

The Commission certifies that WESTERN UNION INTERNATIONAL, 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 Nine Hundred Thirty-Nine Thousand Three Hundred Sixty-Seven Dollars and Twenty Cents (\$939,367.20) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 28 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 aggregate amount of \$3,555,653.10, was presented by WESTERN UNION INTERNATIONAL, INC. and THE WESTERN UNION TELEGRAPH CO. based upon the asserted loss of assets 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 WESTERN UNION INTERNATIONAL, INC. (WUI) was organized under the laws of Delaware, that claimant, THE WESTERN UNION TELEGRAPH CO. (WUT) was organized in New York, and that at all pertinent times more than 50% of the outstanding capital stock of each was owned by nationals of the United States. An officer of claimant, WUI, has certified that as of June 30, 1969, 98.27% of WUI's outstanding capital stock was owned by nationals of the United States at that time and an officer of claimant, WUT, has certified that as of September 8, 1969, over 99% of WUT'S outstanding stock was owned by nationals of the United States on that date. The Commission therefore holds that claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted as follows:

<u>WUI</u> : Land and Buildings	\$ 238,104.00
Personalty	374,460.00
Going Concern Value of Cuban Operations	<u>2,382,916.00</u>
Total	\$2,995,480.00
<u>WUT</u> : Bank Account	\$ 560,173.10

The record establishes that Western Union, on September 30, 1963, pursuant to the mandate contained in Sec. 222(c)(2) of the Communications Act of 1934, as amended, and in compliance with the orders of the Federal Communications Commission, transferred all the assets of the foreign operations of WUT to WUI excepting funds of WUT held by the National Bank of Cuba in Account No. 4-10-05 (later renumbered to Account No. 4-00-00).

Based on the evidence of record, the Commission finds that beginning on October 14, 1960, pursuant to its Urban Reform Law, the Government of Cuba effected a taking of the realties involved and at this time commenced gradual assumption of complete control over substantially all important

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phases of the Cuban operations. All labor contracts were frozen and all revenues were required to be deposited in a particular bank account over which neither WUT nor WUI had control.

Under these circumstances the Commission holds that the actions of the Government of Cuba resulted in a loss within the meaning of Title V of the Act as of October 14, 1960.

It is contended that the date of taking should be December 31, 1964 or at the earliest December 31, 1963 because until that time the Cuban Government permitted the withdrawal of funds from Cuba to pay sums due to non-United States carriers connecting with Cuba. Based on the evidence of record, however, the Commission finds, in the absence of evidence to the contrary, that the properties were effectively taken on October 14, 1960, and that claimants, as a result, suffered a loss within the meaning of Title V of the Act.

Value

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.

WUI contends that the amount of loss should be measured by the going concern value based on a reasonable period after the date of taking rather than before the date of taking. It argues that since in this case the actual earnings subsequent to the taking are known the going concern value based on

these figures would be more accurate and therefore more appropriate and equitable.

The net earnings after provision for Cuban income taxes are given as follows:

1955	\$ 77,480.05
1956	88,578.05
1957	36,677.54
1958	52,674.37
1959	111,178.00
1960	70,337.00
1961	74,785.00
1962	49,632.00
1963	78,062.00
1964	66,740.00
1965	88,794.00

The Commission is constrained to reject the suggested method of measuring value. Since the date of loss has been found to be October 14, 1960, any earnings thereafter belong to the Government of Cuba. In this regard the Commission has held that claims for future earnings are not within the purview of Title V of the Act (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915; Claim of Ford Motor Co., Claim No. CU-3072; and Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225).

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings, for the three-year period, 1958-1960 (\$78,063.12), at 10% to arrive at the going concern value. Accordingly, the value as of October 14, 1960, the date of loss, was \$780,631.20, to which WUI has succeeded.

Since the value of the going concern operations is based on earnings capacity, the Commission considers that the excess of its liquid assets, such as cash and accounts receivable, over current liabilities would constitute additional factors to be considered in determining the overall value.

However this information is not of record. Accordingly these factors cannot be considered by the Commission and the Commission finds that the overall value to which WUI succeeded is \$780,631.20. In this regard the Commission finds, with regard to the portion of WUI'S claim based on the loss of land, buildings and personalty that these do not constitute liquid assets to be considered as additional factors in determining overall value. Accordingly this portion of WUI'S claim is denied.

WUT

With regard to the claim of WUT for the loss of a bank account in the amount of \$560,173.10 the record contains an affidavit of the Treasurer of WUT which reflects that the total bank balances on deposit in banks in Cuba was \$216,286.75 (the peso being on a par with the United States dollar) as of October 14, 1960.

An official of WUI states that although the name on this bank account remains that of WUT, monies deposited in this account after the divestment of WUT'S foreign assets to WUI, belong to WUI. He adds, however, that no withdrawal for WUI'S own benefit could be made without permission of the Cuban authorities, and that such permission is impossible to obtain. He concludes that the balance in the account which on December 31, 1969 was \$1,669,627.32, except for \$560,173.10 due to WUT, is due WUI, and that each new deposit that is made represents an additional taking.

The Commission however has held above that the taking was effected on October 14, 1960 and that earnings thereafter, and this would also apply to deposits made, belong to the Government of Cuba. In this regard, based on the evidence of record, the Commission finds that the loss of WUT in connection with the bank account was the balance as of October 14, 1960.

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.

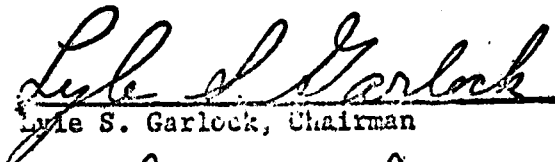
CERTIFICATIONS OF LOSS

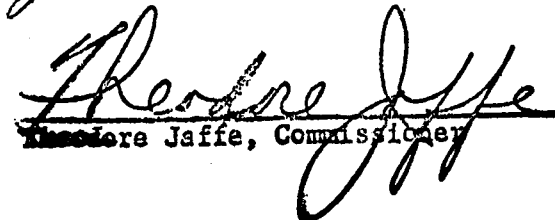
The Commission certifies that WESTERN UNION INTERNATIONAL, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Hundred Eighty Thousand Six Hundred Thirty-One Dollars and Twenty Cents (\$780,631.20) with interest at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that THE WESTERN UNION TELEGRAPH 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 Two Hundred Sixteen Thousand Two Hundred Eighty-Six Dollars and Seventy-Five Cents (\$216,286.75) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

JUN 16 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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