

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

IN THE MATTER OF THE CLAIM OF

THE CHASE MANHATTAN BANK
National Association

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2685

Decision No. CU-6295 *X*

Counsel for claimant:

Milbank, Tweed, Hadley & McCloy
By Andrew J. Connick, Esq.

Appeal and objections from a Proposed Decision entered August 4, 1971.

Oral hearing requested and held on October 7, 1971.

Argument by Andrew J. Connick, Esquire

FINAL DECISION

The Commission issued its Proposed Decision in this claim on August 4, 1971, allowing claimant a loss in the amount of \$5,868,967.71, subject, however, to the outcome of an action pending before the United States District Court for the Southern District of New York entitled Banco Nacional de Cuba v. The Chase Manhattan Bank (Index No. 60 Civ. 4663) Should claimant prevail in this action, any amount permitted by the Court to be offset should be deducted from the amount of the loss determined in the Proposed Decision.

Claimant, through counsel, objected to the Proposed Decision and requested a hearing which was scheduled and held on October 7, 1971. In his objections and accompanying brief, counsel for claimant stated that in determining the value of the branch offices of the CHASE MANHATTAN BANK in Cuba, the Commission failed to include any "going concern value" in addition to the assets, evaluated on the basis of book value. The "going concern value", counsel continued, is normally determined on the basis of one-half of the sum of 5% of the average deposits during the last five years plus ten times the average net profits for the last five years.

At the hearing, counsel introduced the testimony of Yell Newhall, Vice-President of the CHASE MANHATTAN BANK, who testified that the Cuban branches were in existence since 1924, that their earnings were steadily expanding from year to year and that this trend would have continued in view of the fact that the bank branches had a dominant position in the financial and business community of Cuba. Counsel for claimant stated that the evaluation of the branches based solely upon the book value is unrealistic and contrary to the usual practices prevailing among banks in cases of mergers or consolidations of branch offices.

The Commission having given full consideration to claimant's objections, brief, the testimony of the witness, counsel's argument and the entire evidence of record, now finds that in this case the evaluation of the loss should not be limited to the assets of the bank branches, but should also include compensation for the ever increasing business activities of the branches and the substantial earning potential in connection with such activities. The Commission, however, does not approve claimant's formula for the determination of the "going concern value" of the branches, but finds that in countries such as Cuba an amount of 3-1/2% of the average deposits during the last five years sufficiently reflects the premium the bank might have received had the claimant decided to sell the branches or to consolidate them with another bank. Accordingly, 3-1/2% of \$45,500,000, the average sum of deposits during the last five years before nationalization, or \$1,592,500 will be added to the sum heretofore determined in the Proposed Decision as the loss sustained by the claimant.

In view of the foregoing, the Certification of Loss in the Proposed Decision of August 4, 1971 is set aside, the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

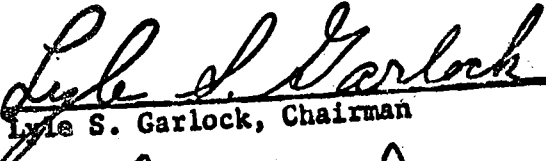
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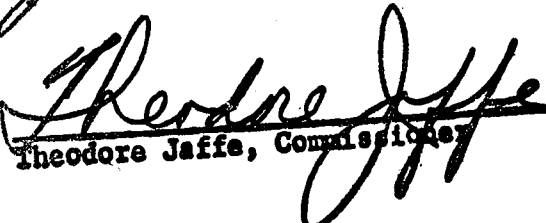
CERTIFICATION OF LOSS

The Commission certifies that THE CHASE MANHATTAN BANK 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 Million Four Hundred Sixty-One Thousand Four Hundred Sixty-Seven Dollars and Seventy-One Cents (\$7,461,467.71) with interest thereon at the rate of 6% per annum from September 17, 1960, the date of the loss, to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

THE CHASE MANHATTAN BANK
National Association

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2684

Claim No. CU-2685

Decision No. CU - 6294

Counsel for claimant:

Milbank, Tweed, Hadley & McCloy
By Andrew J. Connick, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$6,171,230.22 and \$8,598,346.83, respectively, were presented by THE CHASE MANHATTAN BANK, National Association, based upon losses sustained in connection with the nationalization of claimant's branch offices 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 of 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 evidence of record establishes that claimant was organized under the laws of the United States and that at all pertinent times more than 50 per cent of its outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant corporation has certified that at the time of filing of this claim 98.5% of claimant's outstanding capital stock was owned by persons whose addresses were in 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 owned in Cuba four branch offices: two in the business center of the city of Havana, one in the suburb of Vedado, and one in the suburb of Marianao. All branches were engaged in banking, savings and loan activities. On September 17, 1960, the Government of Cuba published in its Official Gazette Resolution No. 2, pursuant to Law 851, which listed as nationalized THE CHASE MANHATTAN BANK. The Commission therefore finds that all property owned by the claimant in Cuba was nationalized by the Cuban Government on September 17, 1960, and that as a result of such action claimant sustained losses within the meaning of Title V of the Act. The Commission notes that under the aforesaid Resolution No. 2

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the Government of Cuba assumed all assets and liabilities of the nationalized branches of THE CHASE MANHATTAN BANK in Cuba.

Claimant asserts that its losses consisted of the following:

Claim No. CU-2684

Loan to Cuban branches	\$ 4,000,000.00
Unremitted profits	1,280,136.55
Contributions to Retirement and Thrift Incentive Plans	129,372.63
Overdraft	94,515.89
Letters of Credit for Cuban branches paid after nationalization	<u>667,205.15</u>
Total	<u>\$ 6,171,230.22</u>

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Capital in Cuban branches	\$ 4,000,000.00
Unremitted profits	1,280,136.55
Contributions to Retirement and Thrift Incentive Plans	129,372.63
Real estate	189,767.72
Going business value	2,850,000.00
Personal property acquired from employees	<u>149,069.93</u>
Total	<u>\$ 8,598,346.83</u>

Claim No. CU-2684 is based on the theory that the Cuban branches were indebted to the claimant, and claim No. CU-2685 that the Cuban Government confiscated the assets belonging to the claimant. Claimant admits that there is some duplication in the items claimed under those theories and concedes that claimant is entitled to relief under one theory or the other, but not under both.

Upon due consideration, the Commission finds that claimant corporation was the owner of the branches in Cuba and that the claim should be predicated upon the ownership of the property taken, and not upon claimant's character as a creditor of its branches. Accordingly, claim No. CU-2684 will not be further considered and it is hereby denied.

However, one item of claim No. CU-2684, namely, the letters of credit paid after nationalization, will be considered as a separate loss incurred by the claimant in the discussion of claim No. CU-2685 (infra).

The value of the property taken by the Government of Cuba remains to be determined. The Act provides in Section 503(a) that in making determinations

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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, under which particular circumstances, is "most appropriate to the property and equitable to the Claimant". The Commission has concluded that 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.

In the Claim of The First National Bank of Boston (Claim No. CU-2268, Final Decision, 1969 FCSC Ann. Rep. 33), the Commission held that book value was not a proper method of valuation where additional evidence indicated that it is not equitable to the claimant, and that the fair market value of claimant's branches reflected a better evaluation of the branches. In the Claim of First National City Bank (Claim No. CU-2628, 1969 FCSC Ann. Rep. 54) the Commission held that capitalization of net profits was an appropriate method of determining the going concern value of claimant's branches.

Claimant submitted a consolidated balance sheet for all four Cuban branches as of August 31, 1960, which reveals the assets and liabilities of the Cuban operations as follows:

<u>Assets</u>		<u>Liabilities</u>	
Cash and Cash Items	\$ 1,795,237	Demand Deposits	\$21,321,488
Due from Banks	10,832,228	Time Deposits	13,242,594
Due from Int. Department	498,703	Due to Int. Department	148,124
Due from Branches	25,680	Unearned Discount	29,025
Investments	5,374,655	Other Liabilities	127,104
Mortgages	30,100	Tax Reserves	170,448
Loans, Discounts & Overdrafts	21,070,984	Capital	4,000,000
Accrued Interest Receivable	83,283	Unremitted Profits	923,320
Banking Houses	110,232		
Accounts Receivable and Other Assets	<u>141,001</u>		
	\$39,962,103		\$39,962,103

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A report filed by the claimant with the American Embassy in Havana on July 15, 1960, stated that THE CHASE MANHATTAN BANK's capital investments plus unremitted profits as at the close of June 30, 1960 amounted to \$4,865,253.68. Additionally, the book values of claimant's real estate holdings at 310 Aguiar in Havana were listed at \$165,090.00, and the book value of the furniture, fixtures, equipment and machinery in all four branches at \$599,752.23, less \$132,271.11 for depreciation, thus totaling \$467,481.12.

In claiming the going concern value of the four branches, in addition to its capital investments, claimant states that the going concern value is normally determined on the basis of one-half of 5% of the average deposits during the last five years, plus ten times the average net profits for the last five years. Claimant asserts that the average amount of the deposits was \$45,500,000, that 5% of this sum is \$2,275,000, and that the average net profit was \$344,000; ten times this amount is \$3,440,000, a total of \$5,715,000; divided by two, giving, therefore, a going concern value of \$2,857,500 or, rounded, \$2,850,000.00.

The Commission's method of valuation in the claim of The First National Bank of Boston (supra) was based upon the percentages of profits of the Cuban branches as compared to the total profit of the entire banking organization, upon the stock value of the corporation for the year 1959 and upon the ratio between profits and stock value. These data have not been submitted by the claimant in the instant claim and this method of valuation is therefore not applicable here.

The Commission's method of valuation in the claim of First National City Bank (supra) was based upon the average earnings of the Cuban branches during the years 1955 through 1959, capitalized at 10%, resulting in the going concern value of the branches. No additional compensation was allowed for claimant's investments and individual property items, except for losses resulting from the payment of commercial credits by the claimant after nationalization of the branches and from the payment for the reimbursement of losses of claimant's employees.

From the foregoing it is evident that either book value, or fair market value or going concern value of the branches may be appropriate. The determination as to which method will be found the most appropriate to the property and equitable to the claimant, depends on the evidence submitted by the claimant and on the facts of the individual claim.

In the instant claim, the method adopted in the First National City Bank claim would result in the allowance of \$3,440,000 (10 times the yearly average net profits of \$344,000) for the value of the branches as a going concern. However, the balance sheet of August 31, 1960 discloses a net worth of the branch offices of \$4,923,320. Since the book value here appears to be more equitable to the claimant whose initial investment was \$4,000,000 and whose earnings have been, in part, added to the investments, the Commission adopts the book value method and finds that claimant's loss of property in connection with the nationalization of the branches in Cuba within the scope of Title V of the Act was \$4,923,320.00.

This loss includes real estate, improvements and furniture as well as office equipment - items presumably entered in the books as Investments. It replaces the going concern value, as set forth above.

Claimant asserts that the assets consisted also of \$170,448 for reserved taxes, \$157,343.55 charged off from loans payable but not yet entered to profits, and \$29,025.00 for unearned discounts. The Commission finds that the reserves for taxes, and the loans charged off but not entered as profits, and the unearned discounts are properly liabilities, and not assets, and therefore not compensable under the provisions of Title V of the Act.

The claim asserted for real estate, as already stated, cannot be considered here inasmuch as it is included as an investment item in the computation of the net worth of the branches.

The Havana branch was indebted to the International Department of claimant's banking organization in the amount of \$148,124.00 for contributions

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paid into that account by employees and the employer for a Retirement and Thrift Incentive Plan administered by the claimant. Claimant is under an obligation to continue to administer these Plans and to make payments under the trust provisions established thereunder; and the Commission finds that claimant is entitled to claim a loss for the amounts paid by THE CHASE MANHATTAN BANK in the aggregate amount of \$129,372.63.

In December 1960 claimant acquired by purchase from eight of its employees in Cuba certain real and personal property, and received from them assignments in consideration of such payments. The record shows that the employees and amounts paid for the property were as follows:

Thomas Findlay	\$ 73,121.00
George S. Malcolm	8,550.72
Frank G. Brennan	8,834.99
William S. Beaulieu	12,060.00
Jack L. Powers	8,662.31
Jerald L. Schneiderman	6,614.61
Otto L. Reisman	20,533.31
Thomas J. Carter	<u>10,692.99</u>
	\$149,069.93

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected a confiscation of all goods, chattels, rights, shares, bonds and other property of persons who fled from Cuba. The Commission finds that this law applied to the properties formerly owned by claimant's above named employees who had left Cuba before that date, and concludes that all of these properties which had been purchased by claimant were taken by the Cuban Government on December 6, 1961 (see Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]).

Since claimant compensated the employees in advance of the taking and received assignments of property in consideration of such payments, the Commission finds that claimant suffered an additional loss within the meaning of Title V of the Act in the amount of \$149,069.93.

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Claimant states that the head office was bound to pay and did pay the aggregate sum of \$667,205.16 on account of letters of credit issued on instructions received from the Cuban branches prior to their nationalization; all payments were made after the date of nationalization and represent a total loss to the claimant, since any collateral or other security for the issuance of the letters of credit was located in the branch offices in Cuba and was subject to the nationalization by the Cuban Government. Upon the examination of the schedules of payment submitted by the claimant, the Commission finds that claimant has paid between September 21, 1960 and December 29, 1960 to 203 customers \$667,205.15 based upon such letters of credit; and further finds that it thus sustained an additional loss in connection with the nationalization of the Cuban branches in the aforesaid amount of \$667,205.15.

The aggregate amount of the losses is summarized as follows:

Loss of branch offices	\$ 4,923,320.00
Contributions to Retirement and Thrift Incentive Plans	129,372.63
Payment to employees for their property	149,069.93
Payment of letters of credit	<u>667,205.15</u>
Total	\$ 5,868,967.71

The Commission therefore finds that claimant suffered a loss within the meaning of Title V of the Act in the amount of \$5,868,967.71.

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).

The record shows that claimant has attempted to recover and set off against the Cuban Government the following amounts:

- (1) \$7,256,398.65 representing excess collateral securing indebtedness to the claimant; and
- (2) \$2,537,622.95 representing proceeds of time deposits.

The record further shows that the right to set off these sums is under litigation and still pending before the United States District Court for the Southern District in New York in an action entitled Banco Nacional de Cuba v. The Chase Manhattan Bank, (Index No. 60 Civ. 4663).

Should the claimant THE CHASE MANHATTAN BANK prevail in this litigation, any amount permitted to be offset by the Court should be deducted from the amount of the loss determined herein.

Should the claimant not prevail in the litigation and therefore be prevented from offsetting the loss, the following certification will take effect:

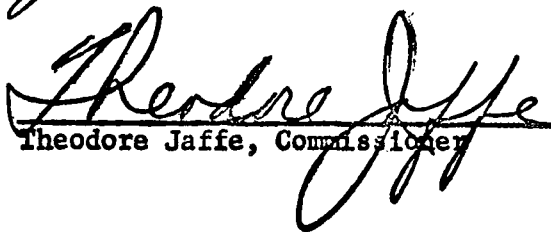
CERTIFICATION OF LOSS

The Commission certifies that THE CHASE MANHATTAN BANK 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 Five Million Eight Hundred Sixty-eight Thousand Nine Hundred Sixty-seven Dollars and Seventy-one Cents (\$5,868,967.71) with interest at the rate of 6% per annum from September 17, 1960, the date of the loss, to the date of settlement.

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

AUG 4 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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