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

IN THE MATTER OF THE CLAIM OF

USM PAN-AMERICAN, LTD.

Claim No.CU-2932

Decision No.CU 3842

Under the International Claims Settlement Act of 1949, as amended

Counsel for claimant: William C. Munroe, Jr., 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 $1,653,640.25, was presented by the United Shoe Machinery Company de Pan-America, based upon the asserted loss of certain real and personal property in Cuba. As of June 6, 1969, claimant's name was changed to USM PAN-AMERICAN, LTD.

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 was organized under the laws of Maine, and that at all pertinent times all of claimant's outstanding capital stock was owned by the United Shoe Machinery Corporation, organized under the laws of New Jersey, whose name was changed to USM Corporation as of June 25, 1968. An authorized officer of the parent corporation has certified that more than 50% of the parent corporation's outstanding capital stock was owned by nationals of the United States at all pertinent times, and that as of October 30, 1967, approximately 99.5% of the parent corporation's outstanding capital stock was owned by persons with addresses 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 operated a branch in Cuba where it engaged in the business of leasing and selling shoe machinery. In connection with these activities, claimant owned certain real and personal property in Cuba.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the United Shoe Machinery Co. 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.

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". 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 and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has computed its amended claim as follows:

Real Property:		
Land at Calzada del Cerro	$ 75,000.00	
Land at Cruzero del Armada	22,233.64	
Building at Calzada del Cerro	50,000.00	$ 147,233.64
Personal Property:		
Furniture & fittings	11,793.27	
Plant & equipment	19,727.52	
Inventory	98,949.25	
Lease machines on hand	58,392.64	
Leased machines	1,099,350.00	
Prepaid expenses	1,085.97	$1,289,298.65
Debts:		
Accounts Receivable:		
Sales customers	$ 82,427.22	
Lease customers	36,559.31	
Bank deposits	98,121.43	217,107.96
Total		$1,653,640.25

The record includes a copy of a deed to the premises at Calzada del Cerro; photographs of the property; copies of balance sheets for the Cuban branch covering the periods ending February 29, 1960, June 30, 1960, July 31, 1960, August 31, 1960, and September 30, 1960; copies of bank statements; copies of standard leases employed by claimant; a copy of an insurance policy covering the leased machines; copies of extracts from claimant's 1960 Federal tax return; lists and schedules of the machines on lease and the lessees involved, indicating claimant's evaluation of the leased machines; affidavits and statements from officers and employers of claimant concerning the values of claimant's properties in Cuba; copies of receipts from claimant's employees for certain funds belonging to claimant; claimant's detailed explanations of the various items of property for which claim was made; and statements to the Department of State by claimant's Cuban branch manager.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter.

Real Property

The evidence establishes that claimant acquired the real property at Calzada del Cerro in 1920, that it made extensive improvements to the premises between 1920 and 1937, and that it further improved the property in 1959 at a cost of $20,000.00. Based upon the entire record, including the detailed appraisal by an expert whose appraisals have been relied upon by the Commission in other Cuban claims, the Commission finds that the values of the real property on October 24, 1960, the date of loss, were $75,000.00 for the land at Calzada del Cerro, $50,000.00 for the building on that site, and $22,233.64 for the land at Cruzero del Armada, or the aggregate amount of $147,233.64.

Furniture and Fittings

The record shows that claimant maintained certain furniture and fittings at its branch office at 1709 Calzada del Cerro. Claimant has asserted as the value of said property the gross amount shown in the various balance sheets it submitted, namely, $11,793.27. This figure also agrees with statements on file of Mr. Rogelio Valdes, manager of claimant's Cuban branch, to the Department of State as of August 31, 1960 and to claimant under date of October 25, 1960. Mr. Valdes had been employed at the Cuban branch from 1920 until 1960 when nationalization occurred, and had been manager of the branch since March 24, 1952. In such capacity, Mr. Valdes had direct personal knowledge of property values in Cuba and particularly of claimant's branch properties, so that he qualified as an expert.

On the basis of Mr. Valdes' appraisal, the Commission finds that the value of claimant's furniture and fixtures on the date of loss was $11,793.27.

Plant and Equipment

Claimant's plant and equipment at its Cuban branch are asserted to have had the aggregate value of $19,727.52, based upon Mr. Valdes' appraisal in his affidavit of April 18, 1967 (Exhibit 12), statements of August 31, 1960 and October 25, 1960 to the Department of State and claimant, respectively, and in his letter to counsel for claimant, dated October 27, 1967.

On the basis of Mr. Valdes' appraisal, the Commission finds that the value of claimant's plant and equipment on the date of loss was $19,727.52.

Inventory

It is asserted that claimant's branch office inventory had a value of $98,949.25, for machines in stock held for sale, machine parts and related property. The various balance sheets of record show these items of property as $137,341.88. However, Mr. Valdes has stated in his affidavit of April 18, 1967 that the inventory had been reduced by sales and had not been replaced by other inventory. This fact is supported by his statement to counsel for claimant, dated October 27, 1967, that this amount represented the latest inventory figures recorded at the branch office, and his report to claimant, dated October 25, 1960. In his statement to the Department of State under date of August 31, 1960, Mr. Valdes stated the value of $137,341.88 as of June 30, 1960.

On the basis of Mr. Valdes' statements as to facts within his personal knowledge, the Commission finds that the value of claimant's plant and equipment on the date of loss was $98,949.25.

Lease Machines on Hand

Claimant has asserted a value of $58,392.64 for the machines its Cuban branch held on hand for leasing purposes. This amount agrees with Mr. Valdes' appraisal in his affidavit of April 18, 1967, his report to claimant, dated October 25, 1960, and his letter to counsel for claimant, dated October 27, 1967. However, his statement as of August 31, 1960 to the Department of State indicates a value of $58,398.64. Claimant states that Mr. Valdes undoubtedly made a minor error. It is concluded that the balance sheet figure for this item of property, which is shown as depreciated, is neither appropriate to the property nor equitable to the claimant.

On the basis of Mr. Valdes' appraisal, the Commission finds that the value of claimant's machines held on hand for leasing was $58,392.64 on the date of loss.

Leased Machines

The record shows that a number of machines belonging to claimant were in the hands of lessees on the date of loss. Claimant has asserted a loss in the aggregate amount of $1,099,350.00 on account of these leased machines. Its computation is based upon the following considerations. Although claimant was unaware of the precise ages of the machines, it determined the replacement costs for similar new machines in Cuba as of October 1, 1960 and applied a depreciation factor it had derived to reduce these values for the years from the dates of delivery to the Cuban lessees, which it deemed to be the dates when the machines were new, to October 1, 1960. Claimant added that the machines were maintained in proper working order at all times, that the lessees had certain obligations in this respect, and that in many cases the only parts of the original machines that remained were the base and other nonmoving parts.

The record includes a detailed listing of all lessees with a description of the machines on lease to each one, the dates of delivery, the October 1, 1960 sales price in Cuba, the depreciated values for each machine, and the full costs of the machines to the Cuban branch (total landed costs) which included manufacturing costs, an addition of 10% for overhead and profit of claimant's home office, and the costs of freight, insurance, customs duties, brokerage and dockage fees.

An examination of the foregoing documents and claimant's explanations of its methods in determing the said values indicated a great disparity between the total landed costs and the values determined by claimant. Moreover, the delivery dates of the machines, deemed by claimant to be the dates when they were new, show the following with respect to 342 leased machines:

(a) 89 machines, representing 5 in 1918, 9 in 1919, 2 in 1921, 1 in 1922, 2 in 1926, 2 in 1927, 8 in 1928, 34 in 1929, 24 in 1930, and 2 in 1931, all of which were 29 or more years of age on the date of loss, October 24, 1960.

(b) 52 machines, representing 1 in 1932, 1 in 1935, 3 in 1936, 1 in 1937, 1 in 1938, 1 in 1939, 7 in 1941, 1 in 1944, and 36 in 1945, all of which were 15 or more years of age on the date of loss.

(c) 52 machines, representing 28 in 1946, 13 in 1947, 4 in 1948, 5 in 1949, and 2 in 1950, all of which were 10 or more years of age on the date of loss.

(d) 66 machines, representing 4 in 1951, 3 in 1952, 7 in 1953, and 52 in 1954, all of which were 6 or more years of age on the date of loss.

(e) 83 machines, representing 10 in 1955 (5 years old), 4 in 1956 (4 years old), 23 in 1957 (3 years old), 17 in 1958 (2 years old), 22 in 1959 (1 year old), and 7 in 1960 (new).

It further appears from the record that the leased machines were insured pursuant to a policy covering September 10, 1959 to December 31, 1960, which policy listed each of the lessees and the amounts of insurance for all of the leased machines, which aggregated $376,296.00 plus additional coverage up to $75,000.00 for other machines leased after the initial listing thereof and issuance of the policy. The total insurance coverage was, therefore, not to exceed $451,296.00. This policy, includes four lessees in the aggregate insured amount of $33,419.00, who do not appear on claimant's list (Exhibit 15), and claimant's list includes seven lessees with an aggregate asserted value of $58,740.30, not mentioned in the insurance policy.

In Mr. Valdes' affidavit of April 18, 1967, he appraised the value of the machines as follows:

> The Company's machines on lease to shoe factories in Cuba were producing income of about $90,000 per year. The book value of these machines were very much below their true worth. My estimate of the value of these machines in 1960 is $516,492.08 which estimate is based on their sale value and their income producing value. It is not their replacement value, since the sale price of replacement machines would be much higher.

Mr. Valdes' appraisal agrees with his statements to the Department of State, to claimant and to counsel for claimant, dated August 31, 1960, October 25, 1960 and October 27, 1967, respectively. In the last statement to counsel, Mr. Valdes added that his evaluation "was based on what a reasonable and honest used sale value they were worth - considering the age of each machine, their working conditions and the many years of added service they would give -- Also the fact that they were producing about $90,000.00 a year of rentals and royalties and that a slight improvement for the shoe industry would have these same machines producing over $100,000.00."

The great disparity between Mr. Valdes' appraisal and claimant's asserted value of these leased machines was brought to the attention of claimant through counsel and an explanation was requested. Counsel's reply on behalf of claimant under date of July 23, 1969 was that Mr. Valdes' statement was only an estimate based on the cost of the machines to the Cuban branch and the income derived from leasing them. Counsel added that Mr. Valdes' estimate was twice the book value as of September 30, 1960, whereas claimant's asserted value was based on claimant's 1960 sales prices for those machines or the 1960 sales prices for the nearest equivalent machines with respect to those machines no longer manufactured. He then explained in greater detail how claimant arrived at its asserted value of the leased machines, $1,099,350.00, which was substantially the same as indicated above.

Upon careful consideration of this matter, the Commission finds that the valuation most appropriate to the leased machines and equitable to the claimant is the appraisal made by claimant's Cuban branch manager, who had been employed by claimant at its branch office for forty years,more than eight of which were in the capacity as branch maganger. Accordingly, the Commission finds that the aggregate value of claimant's leased machines on the date of loss was $516,492.08.

Prepaid Expenses

Claim is made for $1,085.97 for prepaid expenses. Claimant has stated that as of October 25, 1960, its Cuban branch had an asset, prepaid expenses, which had been reduced to $1,085.97 by that date. This is confirmed by Mr. Valdes' statement to claimant as of October 25, 1960 and the branch's balance sheet as of September 30, 1960. Accordingly, the Commission finds that the value of the branch's asset, prepaid expenses, was $1,085.97 on the date of loss.

Accounts Receivable

It is asserted that claimant's Cuban branch owned debts due from its Cuban sales customers in the amount of $82,427.22, and from its Cuban lease customers in the amount of $36,559.31, or the aggregate amount of $118,986.53. These amounts are comfirmed by the branch's balance sheet as of September 30, 1960, Mr. Valdes' affidavit of April 18, 1967, and by his statement to counsel for claimant dated October 27, 1967. In said statement to counsel, Mr. Valdes reported that "Our books were kept right up to date and the figures used in my Affidavit were taken from the books just before leaving." The branch's balance sheet as of September 30, 1960 shows a reserve for bad debts in the amount of $15,000.00, which appears in each of the balance sheets of record.

Accordingly, the Commission finds that the value of claimant's accounts receivable from its Cuban sales and lease customers on the date of loss was $103,986.53.

Bank Deposits

Claimant has claimed $98,121.43 as the amount of its Cuban branch's bank deposits. It appears, however, from claimant's statements that this amount represents $67,079.12 on deposit in Cuban banks, $300.00 on hand (petty cash), and $30,742.31, constituting funds Mr. Valdes had withdrawn and placed in private hands, as "loans" in an effort to protect them from expropriation. The amount claimed is confirmed by Mr. Valdes' affidavit of April 18, 1967, his statement to claimant as of October 25, 1960, and his statement to counsel for claimant, dated October 27, 1967.

The Cuban branch's balance sheet as of September 30, 1960 shows petty cash and two bank accounts in the aggregate amount of $67,379.12, as well as "Deposits" in the amount of $30,742.31. Claimant has submitted receipts from most of the persons who had received the funds, acknowledging the aggregate amount of $26,620.00. Copies of bank statements indicate credits in favor of claimant in the amount of $67,962.04 as of September 30, 1960.

The Commission finds on the basis of all the evidence of record that on the date of loss claimant owned bank deposits and petty cash in the aggregate amount of $67,379.12 and monies held by employees in the aggregate amount of $30,742.31.

Recapitulation

Accordingly, the Commission finds that the aggregate value of claimant's assets in Cuba on October 24, 1960, the date of loss, was as follows:

Item of Property	Amount
Real Propery	$ 147,233,64
Furniture and Fittings	11,793.27
Plant and Equipment	19,727.52
Inventory	98,949.25
Lease Machines on Hand	58,392.64
Leased Machines	516,492.08
Prepaid Expenses	1,085.97
Accounts Receivable -Trade	103,986.53
Cash on Hand and in Banks	67,379.12
Deposits with Employees	30,742.31
Total	$1,055,782.33

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.)

The record shows that claimant was indebted to Cuba for taxes in the amount of $936.72 on October 24, 1960, the date of loss. The Commission, therefore, finds that the net loss sustained by claimant within the meaning of Title V of the Act was $1,054,845.61.

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 USM PAN-AMERICAN LTD. 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 Million Fifty-Four Thousand Eight Hundred Forty-Five Dollars and Sixty-One Cents ($1,054,845.61) with interest 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

SEP 3 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)