

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

IN THE MATTER OF THE CLAIM OF

FORD MOTOR COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

*Final Decision Filed  
after this P.D.*  
Claim No. CU - 3072

Decision No. CU - 4015

Counsel for claimant:

Robert M. Campbell, Esquire

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 \$2,138,024.42, was presented by FORD MOTOR COMPANY, based upon the asserted loss of a stock interest in Creditos y Descuentos Mercantiles, S.A., a Cuban corporation, unrealized profits, loss of personal property and a contingent loss under guarantees extended to banks in connection with loans made by such banks to the Cuban corporation mentioned.

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.

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware. The record shows that at all times pertinent to this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals.

Claimant states that 1 (one) percent of its stockholder interest is presumed to be owned by non-nationals of 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.

#### Stock Interest In CREDESCO

The evidence establishes and the Commission finds that claimant, the FORD MOTOR COMPANY, owned a 100% stock interest in Creditos y Descuentos Mercantiles, S.A., hereafter referred to as CREDESCO, a corporation organized under the laws of Cuba.

On October 24, 1960 the Government of Cuba published in its Official Gazette Resolution 3 (pursuant to Law 851), which listed CREDESCO as nationalized, and the Commission finds that it was nationalized on that date within the meaning of Title V of the Act.

Since CREDESCO was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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 record includes copies of a balance sheet and profit and loss statement for CREDESCO as of August 31, 1960, detailed schedules for the individual items included in such financial statements, and a copy of an insurance policy under which CREDESCO's office furniture and equipment was insured on September 3, 1959.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the

claimant is that shown in the balance sheet of August 31, 1960, which reflects the following, the peso being on a par with the United States dollar:

A S S E T S

Cash		\$ 13,281.41
Notes Receivable		2,378,088.06
Accounts Receivable:		
Wholesale Interest and Insurance Charges	\$177,643.49	
Other Dealer Receivable	70,699.90	
Other Sundry	(3,616.43)	
Branches and Affiliated Companies	<u>47,287.70</u>	
Total Accounts Receivable	\$292,014.66	
Less: Reserve for Doubtful Notes and Accounts	<u>228,600.03</u>	
Net Accounts Receivable		63,414.63
Inventories:		
Company Cars Less Reserve for Depreciation		22,325.13
Prepaid Expenses		<u>1,686.86</u>
Total Current Assets		\$2,478,796.09
Investments: Banco National de Cuba		12,500.00
Real Estate, Plant and Equipment	\$ 29,628.88	
Less Reserves for Depreciation	<u>15,406.81</u>	
Net Fixed Assets		<u>14,222.07</u>
Total Assets		\$2,505,518.16

L I A B I L I T I E S

Bank Liabilities		1,850,000.00
Total Accounts Payable		233,254.50
Accrued Liabilities:		
Vacations and Holidays	10,214.19	
Sundry	600.00	
Deferred Income, Unearned Charges (Retail)	<u>195,115.35</u>	
Total Current Liabilities		<u>205,929.54</u>
		\$2,289,184.04
Capital:		
Capital Stock	\$250,000.00	
Earnings Retained	15,621.36	
Loss, Current Year	<u>(49,287.24)</u>	
Total Capital		<u>216,334.12</u>
Total Liabilities and Capital		\$2,505,518.16

The balance sheet of August 31, 1960 indicates that the net worth of CREDESCO or the excess of its assets over its liabilities on such date was \$216,334.12.

The CREDESCO balance sheet of August 31, 1960, however, also reflects that one of the assets was an account receivable due from claimant (Ford International Division) in the amount of \$47,287.70. Since such unpaid debt does not represent a loss for the claimant, the Commission finds that the amount of the debt or \$47,287.70 should be deducted from the net worth of CREDESCO, resulting in an adjusted net worth of \$169,046.42. Accordingly, the Commission finds that on October 24, 1960 claimant sustained a loss within the meaning of Title V of the Act in connection with its ownership of CREDESCO in the amount of \$169,046.42.

#### Loss of Profit

A portion of the claim is based upon estimated lost profit of CREDESCO for the period from January 1, 1959 to September 30, 1960. The amount of \$39,274.58 claimed for lost profit was calculated upon the average profits assertedly realized by CREDESCO for the calendar years of 1956, 1957 and 1958.

The authority of the Commission in these cases is limited by Section 503(a) Title V to claims which arose after January 1, 1959, "resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property . . . by the Government of Cuba".

A claim for the loss of profits under the statute therefore must be supported by evidence which brings it within the above-quoted provision. The nationalization of CREDESCO on October 24, 1960, in and of itself is not proof of loss of profits for the period prior to the date of nationalization. No other evidence to support a finding that the loss of profits was caused by any action by the Government of Cuba within the purview of the statute was submitted.

The claim for loss of profits may be construed as a claim for the going-concern value of the corporation CREDESCO. However, CREDESCO was

mainly a finance corporation closely affiliated with the financing of the sale of claimant's products only. For that reason it does not appear that CREDESCO had an independent going-concern value distinct and separate from the claimant's sales operations in Cuba. In view of the foregoing, the portion of the claim which is based upon the loss of profits must be and is hereby denied.

Contingent Loss Under Guarantees

It is stated by claimant that it guaranteed the repayment of loans granted to CREDESCO in the total amount of 1,775,000 pesos by six financial institutions, which were The First National City Bank of New York; Banco Gelats (Havana); First National Bank of Boston; The Chase Manhattan Bank; The Royal Bank of Canada; and the Bank of Nova Scotia. A portion of the claim, entitled "provisional claim", is based upon such guarantee and is predicated upon the assumption that in the event payment should be made by claimant under the guarantee, CREDESCO would become indebted to claimant. Claimant explicitly denies liability for any obligation under the guarantee in question and states that it has, as yet, sustained no loss.

Section 501 of Title V of the Act makes it clear that the purpose of that title is to provide for the determination of amount and validity of claims which "have arisen since January 1, 1959". The Act does not provide for the determination of contingent losses or losses which were not sustained by the claimant. Moreover, in view of the nine years which elapsed since the taking of CREDESCO by the Government of Cuba, it appears that any action under the guarantee would be barred by the statute of limitations. In view of the foregoing, the portion of the claim which is based upon a contingent loss in the amount of \$1,775,000.00 must be and it is, hereby denied.

Other Personal Property Owned by Claimant

A contemporary memorandum and other official statements of claimant show, and the Commission finds that claimant (specifically, its Ford International Overseas Distributors and Export Supply Operations) owned machinery and office equipment and a 1959 Edsel passenger car. The Commission also finds that such personal property was taken by the Government of Cuba on October 24, 1960 in connection with the nationalization of claimant's wholly owned subsidiary, CREDESCO. Accordingly, the Commission finds that claimant sustained an additional loss in this respect within the meaning of Title V of the Act in the aggregate amount of \$4,897.00.

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.

CU-3072

CERTIFICATION OF LOSS

The Commission certifies that the FORD MOTOR COMPANY sustained 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 Seventy-three Thousand Nine Hundred Forty-three Dollars and Forty-two Cents (\$173,943.42) 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

OCT 8 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).)



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Counsel for claimant:

Robert M. Campbell, Esq.

Appeal and objections with respect to a Proposed Decision entered October 8, 1969. No oral hearing requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

Under date of October 8, 1969, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$173,943.42, representing \$169,046.42 for a wholly owned Cuban subsidiary called Credesco, and \$4,897.00 for other personal property. Portions of the claim based upon the asserted loss of profit and a contingent loss were denied because the record did not establish that the asserted losses were within the purview of the Act. Claimant objected only to the denial of the claim for loss of profit, and submitted a memorandum in support of the objections.

Claimant contends that during the period January 1, 1959 when Castro came into power to September 30, 1960 Cuba's nationalization policies caused economic hardships to Credesco's customers thereby resulting in a loss of profit to Credesco. The asserted amount of loss is \$39,274.58, computed on the basis of Credesco's average net earnings for the calendar years 1956, 1957 and 1958. It is stated that the loss in this respect is evidenced by a sharp decline in Credesco's net worth after January 1, 1959, and losses from operations.

Upon consideration of claimant's objections in light of the entire record, the Commission is constrained to reject claimant's contentions. While it may be


that Cuba's actions adversely affected Credesco and its customers, they also affected other persons and concerns in Cuba.

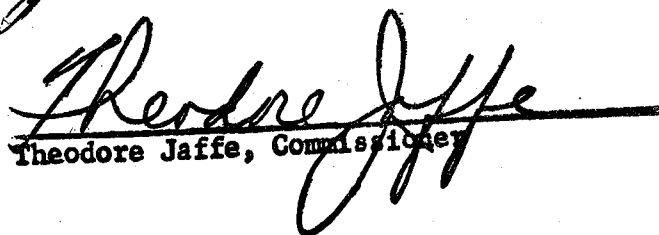
The Commission finds that claimant's losses, if any, in this respect were the indirect result of Cuba's actions directly affecting other persons and concerns. The Commission has consistently held that claims for indirect or incidental losses are not within the purview of Title V of the Act. (See Claim of Cuban Electric Company, Claim No. CU-2578; and Claims of Texaco Incorporated, et al; Claim Nos. CU-1331, CU-1332 and CU-1333.)

Accordingly, the Commission finds no valid basis for altering the decision previously entered. Therefore the Proposed Decision of October 8, 1969 is affirmed in all respects.

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

SEP 8 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner