

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

IN THE MATTER OF THE CLAIM OF

THE INTERPUBLIC GROUP  
OF COMPANIES, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3077

Decision No. CU 3944

Counsel for claimant:

William S. Keating, 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 amount of \$119,702.99, was presented by THE INTERPUBLIC GROUP OF COMPANIES, INC. based upon the asserted loss of a stock interest in McCann-Erickson de Cuba, S.A. Publicidad, a Cuban corporation, and a debt due from that corporation.

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 less than 12 percent of its stockholder interest is presumed to be owned by nonnationals 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.

A copy of the minutes, drawn by the Cuban Revolutionary Committee and being part of the record, shows and the Commission finds that McCann-Erickson de Cuba, S.A., Publicidad, a corporation organized under the laws of Cuba, was seized and occupied by agents of the Government of Cuba on September 12, 1960. Evidence of record also shows and the Commission further finds that on September 12, 1960 McCann-Erickson de Cuba, S.A., Publicidad, owed a debt to claimant, THE INTERPUBLIC GROUP OF COMPANIES, INC., in the aggregate amount of \$13,340.32. The record reflects that this amount was allowed as a deduction on claimant's Federal Income Tax Return.

The Commission has held that debts of Cuban corporations which were taken by the Government of that country are within the purview of

Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Accordingly, the Commission concludes that claimant sustained a loss within the meaning of Title V of the Act in the amount of \$13,340.32.

A portion of the claim is based upon claimant's stockholder interest in McCann-Erickson de Cuba, S.A., Publicidad. It is asserted by claimant that it owned all the outstanding stock of McCann-Erickson de Cuba, S.A., Publicidad, and stated that its loss on account of its stockholder interest in question amounted to \$106,362.67, the book value of its investment in the Cuban corporation's capital stock.

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.

In its pertinent portion the Regulations of the Commission provide as follows:

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) (Supp. 1967).)

By Commission letter of June 20, 1967, claimant was advised as to the type of evidence appropriate for submission and the sources from which it might be obtained. Additional suggestions were made to claimant concerning

the documentation of the claim by letter of June 6, 1968. In reply, claimant submitted original stock certificates, indicating its ownership of 455 shares of stock in McCann-Erickson de Cuba, S.A., Publicidad, and a copy of Schedule 13 of the balance sheet of McCann-Erickson, Inc. (claimant's former name), of December 31, 1959, entitled "Investment in and Advances to Subsidiaries, December 31, 1959". This latter document indicates that claimant was carrying \$106,362.67 as an investment in McCann-Erickson de Cuba, S.A., Publicidad.

Although claimant states that the amount of its investment was allowed as a tax deduction on its Federal Income Tax Return, it must be noted that this does not necessarily represent the value of the stock on the date of loss which the Commission is required to consider.

By letter of July 5, 1968, and by telephone on August 14 and October 30, 1968, as well as September 22, 1969, further suggestions were made to claimant concerning the substantiation of the asserted value of its ownership interest in McCann-Erickson de Cuba, S.A., Publicidad, as of September 12, 1960, the date of loss. However, claimant stated that it is unable to obtain any further information and it has no records in addition to those already submitted and incorporated into the record.

The Commission finds that the submitted evidence is of insufficient probative value to establish the value of claimant's ownership interest in the McCann-Erickson, S.A., Publicidad, as of September 12, 1960, the date the Cuban corporation was taken by the Government of that country. Therefore, the Commission concludes that claimant has not met the burden of proof. Accordingly, the portion of the claim which is based upon asserted loss in connection with an ownership interest in McCann-Erickson, S.A., Publicidad, must be and it is hereby denied.

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 THE INTERPUBLIC GROUP OF COMPANIES, INC. 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 Thirteen Thousand Three Hundred Forty Dollars and Thirty-two Cents (\$13,340.32) with interest thereon at 6% per annum from September 12, 1960 to the date of settlement.

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

OCT 1 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)