

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

IN THE MATTER OF THE CLAIM OF

GENERAL MOTORS ACCEPTANCE  
CORPORATION, SOUTH AMERICA  
and  
GENERAL MOTORS CORPORATION

Claim No. CU -3089

Decision No. CU 3875

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Ross L. Malone, 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 \$896,011.00, was presented by GENERAL MOTORS ACCEPTANCE CORPORATION, SOUTH AMERICA, based upon the asserted loss of certain personal property 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 the original claimant was organized under the laws of Delaware. An authorized officer of claimant has certified that at all pertinent times all of the outstanding capital stock of claimant was owned by GENERAL MOTORS CORPORATION, also organized under the laws of Delaware. An authorized officer of the parent corporation has certified that as of March 22, 1968, 98.8% of the parent's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant, hereafter called the original claimant, and the parent corporation are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that the original claimant maintained a branch office in Havana, Cuba, where it provided wholesale financing facilities to automobile dealers and retail financing facilities to customers of such dealers. In conjunction with these activities, the original claimant owned certain items of personal property in Cuba. The evidence includes a copy of a balance sheet and an accompanying schedule for the branch office as of October 24, 1960; a statement from the Comptroller of the original claimant certifying to the accuracy of the said balance sheet and schedule which were prepared from reports submitted by the Cuban branch; copies of typical contracts used by the branch office in providing financing facilities; and statements from officials of the original claimant concerning this claim.

On the basis of the entire record, the Commission finds that the original claimant owned certain assets in Cuba; namely bank accounts and cash on hand, accounts and notes receivable for debts owed by Cuban nationals, company cars, and prepaid expenses. It further appears from the evidence of record that on November 12, 1962 GENERAL MOTORS CORPORATION, the parent, paid the original claimant the sum of \$466,198.00 on account of a debt owed to the original claimant by Cooperativa de Suministros y Creditos Aliados, S.A., a Cuban corporation called Aliados. In consideration of said payment, the parent corporation acquired by assignment an interest in the claim for the receivable due from the debtor Cuban corporation pro tanto. Accordingly, GENERAL MOTORS CORPORATION has been added as party claimant with respect to said assignment.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized GENERAL MOTORS ACCEPTANCE CORPORATION, SOUTH AMERICA. The Commission finds that all of the original claimant's assets in Cuba were nationalized on October 24, 1960. The Commission concludes that as a result of such nationalization and the subsequent assignment to the parent corporation both claimants sustained losses 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". 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 original claimant computed its claim on the basis of its branch's balance sheet as of October 24, 1960, as follows, the Cuban peso being on a par with the United States dollar:

Cash in banks and on hand		\$ 24,184.00
Notes and bills receivable		3,669,933.00
Accounts receivable		<u>197,316.00</u>
		\$3,891,433.00
Total Liabilities	\$3,495,010.00	
Less amounts paid in 1962	<u>490,456.00</u>	<u>3,004,554.00</u>
Company cars		\$ 886,879.00
		<u>9,132.00</u>
Total		\$ 896,011.00

Information received from claimant reflects that the Liabilities of \$3,495,010.00 consisted of the following:

Bank Loans:

Chase Manhattan Bank - Havana	\$ 46,154.00
First National City Bank of New York - Havana	336,335.00
Bank of Nova Scotia- Havana	196,391.00
Bank of Nova Scotia - New York	433,993.00

Insurance Company Loans:

Confederation Life Association- Havana	648,000.00
Imperial Life Assurance Company- Havana	148,800.00
Manufacturers Life Insurance Company- Havana	497,200.00
Sun Life Assurance Company of Canada- Havana	<u>1,000,000.00</u>
	\$3,306,873.00

Accounts Payable - Dealers	87,232.00
Accounts Payable- Miscellaneous	46,957.00
Unpaid Interest on \$433,993.00 (above)	26,042.00
Taxes	<u>27,906.00</u>
	\$3,495,010.00

The amount of \$490,456.00, paid in 1962, consisted of the \$433,993.00 (above) and \$56,463.00, interest thereon.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimants is that shown in the branch's balance sheet as of October 24, 1960. That

balance sheet indicates the values of the branch's assets as follows:

Cash in banks and on Hand		\$ 24,183.68
Notes and bills receivable:		
Retail	\$ 633,526.85	
	3,603.82	
(Aliados)	2,835,628.43	
	25,692.56	
Wholesale	<u>171,482.30</u>	
Total Notes and Bills receivable		3,669,933.96
Accounts receivable:		
Accrued interest (Aliados)	\$ 197,145.74	
Other	<u>170.27</u>	
Total Accounts receivable		197,316.01
Company automobiles	\$ 11,049.74	
Less depreciation	<u>1,918.23</u>	9,131.51
Prepaid expenses		<u>5,043.89</u>
	Total	\$3,905,609.05

It is noted that the original claimant did not own a legal entity in Cuba, but operated a branch office in Havana. Thus we are not dealing here with the nationalization of a Cuban corporation. Accordingly, the Commission consistently has not reduced the value of a corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for debts owing to the Republic of Cuba (see Claim of Simmons Company, Claim No. CU-2302), the reason being that the claimant is or may be liable for the debts of its branch. The Commission, therefore, finds no valid basis for reducing the values of the assets in the Cuban branch by its liabilities. The Commission further finds that the aggregate amount of the assets in Cuba was \$3,905,609.05 on the date of loss.

The said branch balance sheet, however, shows taxes due to Cuba in the amounts of \$27,411.70, \$181.09, and \$313.82, or a total of \$27,906.61. The Commission, therefore, concludes that the aggregate loss sustained by the claimants within the meaning of Title V of the Act was \$3,877,702.44, of which \$466,198.00 was assigned to GENERAL MOTORS CORPORATION.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the original claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by a claimant as the extent thereof.

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 GENERAL MOTORS ACCEPTANCE CORPORATION, SOUTH AMERICA 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 Three Million Four Hundred Eleven Thousand Five Hundred Four Dollars and Forty-Four Cents (\$3,411,504.44) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that GENERAL MOTORS CORPORATION succeeded to and 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 Four Hundred Sixty-six Thousand One Hundred Ninety-eight Dollars (\$466,198.00) with interest thereon at 6% per annum from November 12, 1962 to the date of settlement.

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

SEP 11 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: GENERAL MOTORS ACCEPTANCE CORPORATION may be the subject of another certification of loss in Claim No. CU-3088. GENERAL MOTORS CORPORATION is the subject of a certification of loss in Claim No. CU-3087.

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].)