

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

IN THE MATTER OF THE CLAIM OF

THE PHOTOMETRIC CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0288

Decision No. CU -902

AMENDED PROPOSED DECISION

By Proposed Decision dated January 3, 1968, the Commission denied this claim for the reason that claimant had not established the ownership, loss and value of the property, subject of the claim. Subsequently, claimant submitted additional supporting evidence pertaining to the subject property. Upon consideration of this matter, it is

ORDERED that the Proposed Decision be amended to read as follows:

An official of the claimant corporation has certified that at the time this claim arose the corporate name of the claimant was Amalgamated Textiles, Ltd., a Delaware corporation; that on June 13, 1963, the corporation name was changed pursuant to the Laws of Delaware to THE PHOTOMETRIC CORPORATION; and that at all times pertinent to this claim 100 per cent of the outstanding stock of the claimant corporation and predecessor in interest was owned by stockholders who were residents of the United States and who were assumed to be citizens of the United States. The Commission holds that the claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record contains copies of license and lease agreements, executed in August 1949 between claimant and H. Cordero and Company of Havana, Cuba, hereafter referred to as Cordero. The

record also contains a copy of letter dated 1962 addressed to Theodore Yonkier, President of claimant corporation, from H. Cordero advising that the Government of Cuba took over the Cordero business enterprise. Additionally, claimant has submitted license fee reports, correspondence from Cordero and Eastman Kodak Company as well as extensive correspondence from claimant in clarification of the claim. Based on the entire record, the Commission finds that the claimant leased certain camera and screen room equipment to Cordero; and that the equipment was situated in their "El Sol" clothing store in Havana, Cuba, where it was utilized in the fitting of men's clothing.

A letter from H. Cordero, an official of the consignee firm in Cuba, stated in letter dated December 1962, that the Cordero firm was nationalized on December 5, 1962. On December 5, 1962, the Government of Cuba published its Law 1076 in the Official Gazette. This law authorized the nationalization or expropriation by the Cuban State of private commercial enterprises and their establishments, stores, deposits, goods and rights, dedicated to clothing, weaving, footwear and hardware. There has not been located a specific Resolution of the Cuban Minister of Trade effectuating nationalization of Cordero. It appears, however, that frequently such Resolutions have not been published in the Cuban Official Gazette. Nevertheless, it clearly appears that Cordero engaged in a business utilizing clothing and is within the scope of Law No. 1076 (supra). Accordingly, in the absence of evidence to the contrary, the Commission finds that Cordero was nationalized by the Government of Cuba on December 5, 1962, and claimant's equipment was also taken at that time by Cuban officials. (See Claim of Perkins Marine Lamp & Hardware Corporation, Claim No. CU-0323, 1967 FCSC Ann. Rep. 42.)

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 claimant, in correspondence to the Commission advised that the original market value of the camera and screen room equipment was in the approximate amount of \$12,000.00 at time of shipment to Cordero in Cuba. The claimant advised that while most units are leased the claimant sold outright in 1950 two sets of camera room equipment to a Swiss firm for \$8,500.00 each and one set of screen room equipment for \$3,500.00, f.o.b., New York, or a total of \$12,000.00 for one complete unit. The claimant asserts that equipment consigned to customer firms in 1949-1950 is still being effectively utilized with little or no depreciation.

The Commission has considered the evidence submitted by claimant, as discussed above. Additionally, the Commission has considered depreciation and obsolescence or the estimated useful life of equipment, including Bulletin "F" of the Internal Revenue Service of the United States Treasury Department, data in the Appraisal and Valuation Manual of the American Society of Appraisers (1955-1956) and other records available to the Commission. These sources disclose, among other things, that the average useful life of camera equipment is between 10 and 20 years, with lenses having an average life of 20 years. The equipment in question was utilized for approximately 10 years prior to loss. Based upon the entire record, including evidence available to the Commission concerning similar personal property in Cuba, the Commission finds that at the time of loss the subject property in this particular claim had a total value of \$8,000.00.

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 on December 5, 1962, to the date of settlement, (See Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered.

The Following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that THE PHOTOMETRIC CORPORATION 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 Eight Thousand Dollars (\$8,000.00) with interest at 6% per annum from December 5, 1962, to the date of settlement.

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

OCT 16 1968

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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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$12,000.00, was presented by THE PHOTOMETRIC CORPORATION and is based upon the asserted loss of certain equipment situated in Cuba and upon the loss of certain royalties.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as "(B) 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 Secretary of the claimant corporation has certified that the claimant was organized under the laws of the State of New York and that all times between January 1, 1960 and presentation of this claim on July 26, 1965, more than fifty (50) percent of the outstanding capital stock of the claimant has been owned by United States nationals. The Secretary of the claimant corporation states that all of its sixty-seven (67) stockholders were residents of the United States and assumed to be citizens of the United States.

The Regulations of the Commission provide:

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).)

Claimant states that it leased certain camera and screen room equipment to H. Cordero & Company, that the equipment was situated in their "El Sol" clothing store in Havana, Cuba and that the Government of Cuba took over H. Cordero & Company. Claimant states further that the annual rent was \$600.00 plus two (2) percent of the sales. It is also claimed that royalties were due to claimant for the exclusive right to use the patented art involved.

The record contains a copy of a License and Lease Agreement dated August 9, 1949 and a Manufacturer's License and Lease Agreement dated August 9, 1949. The record also contains a copy of a letter dated December 1962 addressed to Theodore Yonkier, the President of claimant corporation from H. Cordero advising that the Government of Cuba took over H. Cordero & Company. This evidence, by itself, is not sufficient to make a favorable determination in this claim.

By letter dated August 29, 1967, claimant was advised as to the evidence proper for submission to establish this claim under the Act. No evidence or response was submitted to this correspondence. On September 28, 1967, claimant was invited to submit any evidence available to it within forty-five (45) days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained

to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

3 JAN 1968

Edward P. Re

Edward P. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the Proposed Decision of the Commission which was entered on this date.

Francis M. ...
CLERK OF THE COMMISSION

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