

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

IN THE MATTER OF THE CLAIM OF

SEARS, ROEBUCK AND CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0385

Decision No. CU 1145

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$3,704,906.00 was presented by SEARS, ROEBUCK AND CO., based upon the nationalization of its subsidiary Almacenes Sears, Roebuck y Cia., S. A., by the Government of 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 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between August 13, 1941 and presentation of this claim on August 25, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that 99.723% of its stock is held by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has submitted original stock certificates which show that it owned 101,321 shares of Almacenes Sears, Roebuck y Cia., S. A., and an internal balance sheet of the company dated September 30, 1960

which shows that Almacenes Sears, Roebuck y Cia., S. A., had 124,773 shares outstanding. Accordingly the Commission finds that the claimant owned 81.2042% of Almacenes Sears, Roebuck y Cia. Claimant states that the balance of the outstanding stock was owned by Cuban citizens in the form of a Profit Sharing Fund for the employees of the Cuban company.

On October 24, 1960 the Government of Cuba published in its Official Gazette, Resolution 3 (pursuant to Law 851) which listed as nationalized all the property of Sears, Roebuck and Co., in Cuba.

Based on the foregoing the Commission finds that claimant suffered a loss within the meaning of Title V of the Act on October 24, 1960 when its properties in Cuba were nationalized by the Government of Cuba.

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.

Claimant has stated its loss in the amount of \$3,704,960.00, including \$2,550,055.00 which is the figure it assigns to its equity in the net assets of Almacenes Sears, Roebuck and Co., S. A., based on a certified balance sheet of that company of August 31, 1960 and an unaudited and internal balance sheet of that company of September 30, 1960; plus \$405,284.00 for dividends payable to it by Almacenes Sears, Roebuck y Cia., S. A., and \$749,621.00 for debts owed by that company to claimant.

Claimant has submitted a balance sheet of Almacenes Sears Roebuck y Cia., S. A. dated August 31, 1960 certified to by Price Waterhouse and Co. of Havana, Cuba which is summarized below:

ASSETS

CURRENT ASSETS		\$3,993,604.09
INVESTMENTS AND OTHER ASSETS		15,502.00
PROPERTY, PLANT AND EQUIPMENT		
Land	\$ 13,418.00	
Buildings and Improvements	550,533.70	
Fixtures and equipment	814,382.52	
	<u>\$1,378,434.22</u>	
Less accumulated depreciation and amortization	<u>779,618.87</u>	<u>598,815.35</u>
		<u>\$4,607,921.44</u>

LIABILITIES

CURRENT LIABILITIES		\$ 367,309.29
LIABILITY TO SEARS, ROEBUCK AND CO., CHICAGO		
Merchandise account	\$ 693,366.01	
Dividend payable	<u>405,284.00</u>	
		\$1,098,650.01
STOCKHOLDER'S EQUITY		
Capital stock	\$3,119,325.00	
Retained earnings	<u>22,637.14</u>	
		<u>\$3,141,962.14</u>
		<u>\$4,607,921.44</u>

Claimant has further submitted a Loan Account Reconciliation from its auditors which indicates that as of October, 1960, the merchandise account figure of \$693,366.01 was increased to \$749,621.02 to reflect goods in transit.

Claimant also submitted an internal unaudited balance sheet dated September 30, 1960 which reflects that the total net worth of the company Almacenes Sears, Roebuck y Cia., was reduced by \$1,666.28 since the balance sheet of August 30, 1960.

The balance sheets enumerate the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owners' equity or net worth.

The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

The Commission has considered the evidence submitted by claimant in support of its evaluation of that portion of its loss based on its shareholder interest in Almacenes Sears, Roebuck y Cia., S. A., and concludes that the book value is the most appropriate basis of valuation. Accordingly, the Commission finds that at the time of nationalization, the net worth of Almacenes Sears, Roebuck y Cia., was \$3,140,295.86 and that claimant suffered a loss in the amount of 81.2042% thereof equal of \$2,550,052.13. The Commission further finds that Almacenes Sears, Roebuck y Cia., was indebted to the claimant in the amount of \$749,621.02 representing debts owed for merchandise purchased from claimant and \$405,284.00 representing unpaid dividends owed to claimant. Accordingly, the Commission finds that the claimant suffered a loss totalling \$3,704,957.15 within the meaning of Title V of the Act, as a result of the nationalization of Almacenes Sears, Roebuck y Cia., S. A., by the Government of Cuba on October 24, 1960.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 24, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SEARS, ROEBUCK AND CO., 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 Seven Hundred Four Thousand Nine Hundred Fifty-Seven Dollars and Fifteen Cents (\$3,704,957.15), 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

FEB 7 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 13 1968.

Frank Masterson
Clerk of the Commission

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).)

CU-0385