

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

IN THE MATTER OF THE CLAIM OF

ALLIED ARTISTS INTERNATIONAL  
CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3275

Decision No. CU-0931

Counsel for claimant:

Gary Schrager, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated January 10, 1968, the Commission denied this claim for the reason that claimant had failed to submit evidence relating to ownership, loss or value of the property, subject of the claim. Subsequently, claimant submitted additional evidence, and, upon consideration of this matter, the Proposed Decision is hereby amended.

The claim in the amended amount of \$180,676.16, was presented by ALLIED ARTISTS INTERNATIONAL CORPORATION, based upon the asserted loss of film prints and the film rentals of claimant which were deposited in a bank account in Havana, 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 of more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Officers of claimant corporation have certified that the claimant was organized in the State of Delaware, and that at all times pertinent to this claim more than 50% of its outstanding capital stock has been owned by

nationals of the United States. Claimant herein was a wholly-owned subsidiary of Allied Artists Pictures Corporation, a Delaware corporation, 90% of whose outstanding stock was owned by persons having residences in the United States. The evidence discloses that Allied Artists of Cuba, Inc. was a wholly-owned subsidiary of ALLIED ARTISTS INTERNATIONAL CORPORATION.

For several years prior to the asserted date of loss of the property subject of this claim, claimant or a predecessor in interest distributed film product in Cuba through various distributors. At the time of loss claimant utilized the services of its subsidiary, Allied Artists of Cuba, Inc., hereinafter referred to as Allied of Cuba. The film product was then distributed through local distributors or sub-distributors, including such firms as Continental Films, S.A. and Cinematografica Pelimex, S.A., hereinafter referred to as Pelimex. Such product was then the subject of contracts between a distributor, such as Pelimex, and the Cuban exhibitors for exhibition throughout Cuban theatres. Claimant has submitted, among other things, copies of distribution and exhibition contracts, and an inventory of film product located in Cuba, assertedly taken by the Government of Cuba from Pelimex, the Cuban distributor at the time of loss.

The inventory, prepared by Pelimex, includes an alphabetical listing of the product which was submitted by claimant to the subsidiary, Allied of Cuba, for distribution and exhibition in the Cuban area. The list was prepared on the stationery of Pelimex, with each page of the list duly countersigned by an official of the firm for authenticity of the contents. The product in question includes feature presentations and trailers, including 345 - 35mm prints, both black and white and color, 66 - 16mm prints and 1,113 trailers. Based on the aforesaid evidence of record, as well as affidavits and other evidence of record, the Commission finds that claimant herein was at all times pertinent to this claim the owner of the film product in question.

On or about May 1, 1961, Pelimex notified Allied of Cuba, that the Government of Cuba had effectively taken the prints and trailers, as referred to above, which were being exhibited or stored in a vault in Havana,

Cuba, under control of Pelimex. At that time the aforesaid list of such product was prepared, countersigned and forwarded to Allied of Cuba. Evidence of record establishes that similar film distributing companies, or subsidiaries of film companies in the United States and doing business in Cuba, were formally taken by the Government of Cuba pursuant to Resolution 2868, published in the Official Gazette as of May 10, 1961. Thus, based upon the entire record, and, in the absence of persuasive evidence to the contrary, the Commission finds that the film product owned by claimant was effectively taken by the Government of Cuba on May 10, 1961.

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 claimant has submitted records showing the shipment of such prints to the Cuban exchange and various exchanges throughout the world where product owned by Allied is exhibited. These records show the approximate dates of such shipments by claimant to these areas, including Cuba. Further, the evidence of record discloses that the prints shipped to Cuba were made from negatives of various productions previously produced by Allied Artists Productions, co-producers of Allied, or other producers from whom the claimant or Allied Artists Pictures Corporation had secured rights to the prints in question. These prints, apparently shipped to Cuba primarily in the period from 1955 to 1960, had been exhibited or were to be exhibited in

various areas or exhibition zones of Cuba. Thus, the product was in various stages of the depletion cycle, applicable to such property, at the time of loss.

Claimant herein was the designated distributor of Allied and other film product, acquired by Allied, for those areas other than the United States and Canada. Officials of the claimant have submitted their affidavits and statements indicating the cost of manufacturing film product in the years immediately prior to loss, including average length feature presentations and trailers; and these officials have also included data showing the sums claimed for loss of the product included in the instant claim.

Claimant has submitted evidence to establish that the cost of manufacturing a black and white 35mm print, including the film, was approximately \$300.00, that the cost of making a color print in 35mm gauge film was approximately \$600.00; and the average costs of trailer and 16mm prints are in excess of the claimed sums. The claimant has indicated that the depreciated value of 35mm prints of feature presentations would be \$150.00 to \$300.00 each; that the value of each 16mm print was between \$50.00 and \$100.00, while the value of a trailer was from \$12.00 to \$25.00.

Based on the evidence of record and other evidence available to the Commission, the Commission finds that claimant suffered a loss, within the meaning of Title V of the Act, as a result of the taking of the film product by the Government of Cuba as of May 10, 1961. The Commission finds that the reasonable value of the film, as well as costs incidental to manufacturing and availability of such product, is as follows:

72-35mm feature presentations in color, at \$300.00 each	\$21,600.00
273-35mm feature presentations in black and white, at \$150.00 each	40,950.00
66-16mm prints, black and white and in color, average value at \$75.00	4,950.00
1,113 trailers at \$15.00 each	<u>16,695.00</u>
T O T A L . . .	\$84,195.00

Accordingly, the Commission finds that claimant's loss, in connection with the taking of the film product, was in the amount of \$84,195.00.

A portion of the claim was asserted for loss of earned net film rentals which arose from April 1960 to May 1961 and which were due and payable to claimant or Allied of Cuba by the Cuban distributor, Pelimex, and which had been placed in a Pelimex bank account for claimant or its subsidiary. The claimant has submitted evidence, including statements from Pelimex as to the monthly income and share of claimant with the deposit of such funds in a special bank account. The evidence of record establishes that total net film rentals due and payable, deposited to the account of claimant or subsidiary of claimant, doing business in Havana, Cuba, was in the total amount of Pesos 95,676.16.

Law 568, published in the Cuban Official Gazette on September 29, 1959, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

Law 969, published in the Official Gazette on December 6, 1961, by its terms effected confiscation of all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the above-described bank account, with claimant's share totalling 95,676.16 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Further, the Commission finds that on December 6, 1961, claimant's 95,676.16 pesos had a value of \$95,676.16 and that it suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of the bank account by the Government of Cuba as of December 6, 1961.

The Commission has decided that in certifications of loss 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 as follows:

<u>FROM</u>	<u>ON</u>
May 10, 1961	\$ 84,195.00
December 6, 1961	<u>95,676.16</u>
Total	\$179,871.16

Accordingly, 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 ALLIED ARTISTS INTERNATIONAL 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 One Hundred Seventy-Nine Thousand Eight Hundred Seventy-One Dollars and Sixteen Cents (\$179,871.16) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

JAN 5 1971

*Lyle S. Garlock*  
Lyle S. Garlock, Chairman

*Theodore Jaffe*  
Theodore Jaffe, 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 Amended 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. 31.5(e) and (g), as amended (1970).)

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

IN THE MATTER OF THE CLAIM OF

ALLIED ARTISTS INTERNATIONAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 3275

Decision No. CU 931

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 \$170,000.00, was presented by ALLIED ARTISTS INTERNATIONAL CORPORATION, and is based upon the asserted loss of film prints and an interest in a Cuban firm known as Pelimex, S. A.

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, 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.

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).)

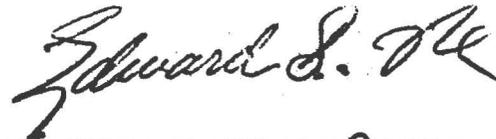
Claimant herein has submitted a claim for loss of film prints and trailers which were under the control of Cinematografica Pelimex, which was assertedly owned by the claimant and the claimant's producers. Claimant submitted an "Inventory of Prints in Cuba", as of April 1960, which were assertedly taken by the Government of Cuba. By Commission letter of June 26, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of August 10, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he 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.

Thereafter, additional suggestions were made to claimant, through counsel, in Commission correspondence dated August 25, 1967, and October 31, 1967. However, claimant has not responded to the letters of the Commission and has submitted no further evidence in support of this claim.

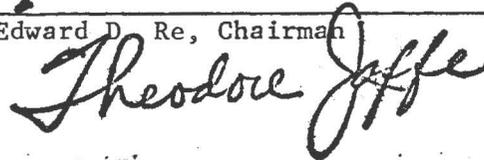
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary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

JAN 10 1968



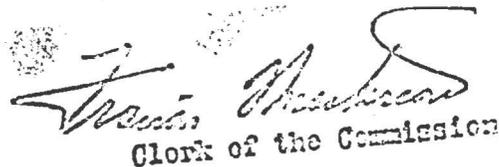
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on -----



Clerk of the Commission

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).)