

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

IN THE MATTER OF THE CLAIM OF

RAPHAEL KATZEN ASSOCIATES INTERNATIONAL, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Claim No. CU-0660

Decision No. CU 4031

Steer, Strauss, White  
and Tobias  
by Paul W. Steer, 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 \$37,784.80, was presented by RAPHAEL KATZEN ASSOCIATES INTERNATIONAL, INC., based upon the asserted loss of certain real and personal property in Cuba, and a debt due from a Cuban 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.

The record shows that claimant was organized under the laws of Ohio, and that at all pertinent times all of claimant's outstanding capital stock was owned by four persons, native-born American citizens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

#### Stock Interest

The evidence establishes and the Commission finds that claimant owned 75 shares of common stock in the Iberia Machinery Company, S.A., a Cuban corporation, hereafter referred to as Iberia. It further appears from other evidence of record, including a report prepared by the Vice President of Iberia, apparently in 1960, and filed with the United States Embassy in Havana, Cuba, that Iberia was the parent of Industrial Service and Construction Company, S.A., its wholly-owned Cuban subsidiary, hereafter referred to as Industrial.

This is the first claim involving the Iberia Machinery Company, S.A. The Commission notes that several other claims have also been filed by other stockholders; thus, this decision may, where applicable, serve as a precedent in the determinations of those other claims.

On October 24, 1960, the Cuban Government published in its Official Gazette, Resolution 3 pursuant to Law 851, which listed as nationalized the Iberia Machinery Company, S.A. The Commission finds that Industrial, the subsidiary of Iberia, was also nationalized by Cuba on October 24, 1960.

Since Iberia and Industrial were organized under the laws of Cuba, neither qualifies as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission, therefore, finds that claimant sustained a loss within the meaning of Title V of the Act on October 24, 1960.

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 interest 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.

Claimant has asserted a value of \$7,500.00 for its shares of stock in Iberia, based upon the par value of \$100.00 per share, the Cuban peso being on a par with the United States dollar.

The record, including the evidence in the claims of those other stockholders of Iberia, contains a copy of a consolidated balance sheet as of June 30, 1959 for Iberia and Industrial, apparently the last available financial statement. That consolidated balance sheet shows the following:

<u>ASSETS</u>	
<u>Current Assets</u>	
Cash on Hand and in Banks	\$ 16,011.92
Cash in Jobs	754.11
Notes Receivable	150.00
Accounts Receivable:	
Customers	\$ 75,260.30
Customers - Retentions	3,354.01
Executive & Employees	4,235.52
Others	<u>1,696.56</u>
	84,546.39
Commission Receivable	5,209.87
Expenditure for Customer's Account	3,679.38
Inventories:	
Warehouse	\$172,449.58
Work Shop	16,236.05
Jobs	<u>1,075.41</u>
	189,761.04
Parts, Accessories & Replacement in Stock	4,607.46
Work in Process	<u>39,540.14</u>
	844,260.31
Total Current Assets	\$344,260.31
<u>Investments</u>	812.16
<u>Fixed Assets - Net</u>	210,849.04
<u>Patents</u>	435.00
<u>Deferred Charges</u>	
Organization Expenses	\$ 56,342.98
Unexpired Insurance	1,225.71
Unamortized Portion of Leasehold	7,837.17
Office Supplies	300.00
Stamps on Hand	<u>60.44</u>
	65,766.30
Total Deferred Charges	<u>65,766.30</u>
TOTAL ASSETS	<u>\$622,122.81</u>

LIABILITIES AND CAPITAL

Current Liabilities

Loan Payable - Chase Manhattan		\$ 80,000.00
Notes Payable - Suppliers		29,789.67
Accounts Payable:		
Foreign Suppliers	\$ 86,413.28	
Local Suppliers	33,897.10	
Other	10,361.97	
Executive & Employees - Credit Balance	<u>3,074.02</u>	
		133,746.37
Customers Advanced Payment on Contracts		26,249.13
Accounts Receivable - Credit Balance		1,590.73
Taxes Payable		13,169.97
Provision for Estimated Cost		8,000.00
Accrued Insurance		5,693.81
Accrued Vacation Compensation		8,211.36
Payroll Payable		1,666.50
Provision for Importation Tax		1,929.50
Purchase Fund - Cia. Agricola Indarra		<u>4,848.12</u>
Total Current Liabilities		\$314,895.16

Reserve (For Contingencies and Taxes) \$ 34,754.42

Capital and Surplus

Capital Issued and Outstanding

Preferred Shares	\$ 50,000.00
Common Shares	<u>200,010.00</u>
	\$250,010.00

Surplus

Balance July 1st, 1958	\$ 49,706.79
Less: Dividends Declared and Adjustment Prior Years	<u>- 27,196.21</u>
	\$ 22,510.58

Net Loss - Year Ended

June 30, 1959

	<u>47.35</u>	
	\$ 22,463.23	<u>\$272,473.23</u>

Total Liabilities and Capital

\$622,122.81

Based upon the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown by the consolidated balance sheet for Iberia and Industrial as of June 30, 1959. The Commission finds that item "Reserve for Contingencies and Taxes") did not constitute a liability, but was in fact a part of the capital and surplus. Accordingly, the Commission finds that the aggregate value of Iberia and Industrial or the excess of their assets over their liabilities on October 24, 1960, the date of loss, was \$307,227.65.

In the absence of evidence to the contrary to establish a value for the preferred shares of stock shown as \$50,000.00 in the balance sheet, the Commission finds that said stock should be valued equally with the common stock on the date of loss.

The records in the related claims also include a list of all the stockholders of Iberia Machinery Company, S. A. as of May 9, 1960, prepared by the former Vice President of Iberia, which discloses that there were 2,099 shares of common stock outstanding as of that date and 50 shares of preferred, for a total of 2,149 shares. The Commission, therefore, finds that the value of each share of stock of Iberia Machinery Company, S.A. on October 24, 1960, the date of loss, was \$142.9603. It is concluded that the value of claimant's 75 shares of common stock in this Cuban corporation was \$10,722.02.

#### LAND

The record includes a copy of a deed establishing that claimant acquired title to certain land in Veradero, Cuba, on April 21, 1956, and a copy of a document, dated July 23, 1957, showing that the one encumbrance on the land had been cancelled by payment.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law, the renting of urban properties and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed. The law covered residential, commercial, industrial and business office properties.

The Commission finds that claimant's land was within the purview of the Urban Reform Law, and that in the absence of evidence to the contrary, the land was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, CU-0183, 1967 FCSC Ann. Rep. 39.)

Based upon the entire record, the Commission finds that evaluation of the land, in the amount of \$7,635.76, as asserted by claimant, is fair and reasonable, and concludes that claimant sustained a loss in that amount on October 14, 1960.

Bank Accounts

The Commission finds that claimant owned two bank accounts at branches of The Trust Company of Cuba, in the amounts of \$157.46 and \$2,840.20, respectively, or the aggregate amount of \$2,997.66. Copies of bank statements included in the record show that the first account was maintained in the names of Raphael Katzen, President of claimant, and one of the other three stockholders; and that the second account appears to have been maintained in the names of the said President and claimant. Other evidence of record establishes that the four stockholders resided in Cuba and that Raphael Katzen was the last to leave Cuba on May 11, 1960.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds, and other securities, as well as bank accounts of persons who left Cuba. The Commission finds that this law applied to claimant's two bank accounts which were maintained in the names of stockholders, as noted above, who had left Cuba prior to December 6, 1961. The Commission, therefore, concludes that claimant's bank accounts, having an aggregate value of \$2,997.66, were taken by the Government of Cuba on December 6, 1961, as a result of which claimant sustained a loss within the meaning of Title V of the Act. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Debt

The evidence establishes that claimant performed certain engineering services for and incurred certain expenses on behalf of the Cuban Bagasse Products, S.A., a Cuban corporation, pursuant to an agreement in 1959. It further appears that these services were performed between July 1959 and April 30, 1960, that they had an aggregate value of \$22,377.92, of which \$2,726.54 was paid by the Cuban corporation. The

balance due was, therefore, \$19,651.38. Claimant states that it has never received any further payments on account of this contract debt.

Evidence available to the Commission establishes that the debtor, Cuban Bagasse Products, S.A., was intervened by the Government of Cuba on August 3, 1960. (See Claim of George F. Baker, III, Claim No. CU-1017.)

The Commission has held that debts of an intervened Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention within the meaning 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 finds that the loss sustained by claimant on August 3, 1960 on account of debts due from Cuban Bagasse Products, S.A. was \$19,651.38.

#### RECAPITULATION

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Iberia and Industrial	10/24/60	\$ 10,722.02
Land	10/14/60	7,635.76
Bank Accounts	12/6/61	2,997.66
Debt from Cuban Bagasse Products, S.A.	8/3/60	<u>19,651.38</u>
	TOTAL	<u>\$ 41,006.82</u>



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

<u>FROM</u>	<u>ON</u>
August 3, 1960	\$19,651.38
October 14, 1960	7,635.76
October 24, 1960	10,722.02
December 6, 1961	<u>2,997.66</u>
Total	\$41,006.82

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CERTIFICATION OF LOSS

The Commission certified that RAPHAEL KATZEN ASSOCIATES INTERNATIONAL, INC. 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 Forty-One Thousand Six Dollars and Eighty-Two Cents (\$41,006.82) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 15 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freiberg*

Sidney Freiberg, 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).)