

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL GROUP,
THE ELECTRIC STORAGE BATTERY COMPANY

Claim No. CU-0846

Decision No. CU 19

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

This claim against the Government of Cuba was denied by Proposed Decision of the Commission issued on November 2, 1966. The matter having been reconsidered, it is

ORDERED that the Proposed Decision be and it is hereby amended as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, in the amount of \$408,825.00 was presented by the INTERNATIONAL GROUP, THE ELECTRIC STORAGE BATTERY COMPANY, based upon the taking by the Government of Cuba of property of a Panamanian corporation, ESBIC Corporation, 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, 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 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 505(c) of the Act provides that

A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

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 ELECTRIC STORAGE BATTERY COMPANY has certified that it is a New Jersey corporation and that at all times between its incorporation in 1888, and presentation of this claim on October 18, 1966, more than 50% of the outstanding capital stock of THE ELECTRIC STORAGE BATTERY COMPANY has been owned 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.

An officer of THE ELECTRIC STORAGE BATTERY COMPANY has further stated that business records which he believes to be accurate indicate that as of November 18, 1966, a total of 56,100 out of the 2,508,463 outstanding shares of THE ELECTRIC STORAGE BATTERY COMPANY, or approximately two and two-tenths percent (2.2%) of such outstanding shares of stock, were held by non-United States nationals.

The evidence of record shows, and the Commission finds, that ESBIC Corporation, S.A., of the Republic of Panama, is a wholly owned subsidiary of claimant. ESBIC Corporation, S.A., was organized in Panama, and was registered under Cuban law to do business in Cuba. Accordingly, the Commission concludes that THE ELECTRIC STORAGE BATTERY COMPANY qualifies as a proper party claimant in accordance with the provisions of Section 505(c) of the Act referred to hereinabove. (See the Claim of Avon Products, Inc., FCSC Claim No. CU-0772, Amended Proposed Decision of February 15, 1967.)

On November 25, 1959, the Government of Cuba published in its Official Gazette Law No. 647 which authorized the Minister of Labor, in such cases as he deemed it necessary, to order the intervention of enterprises or working centers in which normal development of production was assertedly altered. Law 843, published in the Official Gazette of July 6, 1960 gave the Labor Ministry unilateral authority to extend the

period of its intervention of any establishment beyond the six months period provided in Law 647.

The record contains a copy of an "Acta" of April 21, 1961 providing for surveillance of the LSBIC Corporation, S.A., in compliance with an order of superior authority, because of the asserted need to increase production. The plant was thereafter, on May 5, 1961, turned over to the Ministry of Industry. Subsequently the enterprise was nationalized by publication in the Cuban Official Gazette on January 3, 1962. The Commission holds that the official takeover of ESBIC Corporation on May 5, 1961, was in fact a form of intervention as provided for by the Government of Cuba in its Law No. 647 (supra).

Based on the foregoing the Commission finds that claimant suffered a loss within the meaning of Title V of the Act on May 5, 1961 when the business of its wholly-owned subsidiary, ESBIC Corporation, S.A., was intervened by the Government of Cuba. (See the Claim of Parke, Davis & Company, FCSC Claim No. CU-0180.)

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 \$408,825.00, described as representing the lost assets according to a balance sheet of February 28, 1961, as adjusted to include the amounts needed by claimant to substitute the lost assets and to recover the damages suffered by its registered trade marks.

Among the documentation submitted is a balance sheet for the Cuban Branch of ESBIC Corporation, S.A., as of February 28, 1961, which reflects the following:

Assets

Current Assets

| | |
|-------------------------------|-----------|
| Cash in banks and on hand | \$137,864 |
| Notes and Accounts Receivable | 22,700 |
| Due from Employees | 537 |
| Inventories | 54,435 |
| Prepaid and Deferred Items | 16,592 |

Fixed Assets

| | | |
|------------------------------------|-----------------|--------|
| Machinery, Tools and Equipment | \$57,110 | |
| Molds and Dies | 6,866 | |
| Furniture & Office Equipment | 5,293 | |
| Autos and Street Trucks | 3,668 | |
| Leasehold Improvement | 8,186 | |
| | <u>\$81,123</u> | |
| Less Depreciation and Amortization | 9,680 | 71,443 |

| | |
|------------------------------|---------------|
| Prepaid Operational Expenses | <u>25,293</u> |
| | \$328,864 |

Liabilities

Current Liabilities

| | |
|---|------------------|
| Accounts Payable, ESB International, SA | \$ 35,965 |
| Accounts Payable, ESBIC Corporation, SA | 207,711 |
| Accounts Payable, Others | 2,438 |
| Accrued Salaries and Wages | 2,897 |
| Accrued Expenses | 3,373 |
| Accrued Payroll Taxes | 939 |
| Income Taxes | 14,893 |
| Other Accrued Taxes | 2,489 |
| | <u>\$270,705</u> |

| | |
|-----------|---------------|
| Net Worth | <u>58,159</u> |
| | \$328,864 |

The difference between the asset figure of \$408,825 claimed and the asset figure on the balance sheet of \$328,864 is \$79,961. Examination of the record discloses that this consists of \$50,000 for trademarks, an increase of \$20,281 in the asserted values of fixed assets, to cover replacement costs, and the \$9,680 for depreciation and amortization shown on the balance sheet.

Claimant states that although registered trademarks of considerable importance were used by ESBIC in Cuba, these assets did not appear on the balance sheet; that this is a customary accounting practice for, although accountants recognize the practical business value of trademarks, the difficulty in assigning a reasonable accurate value to trademarks leads most accountants to omit these assets from the balance

sheet entirely; and that the accounting practice of showing assets on balance sheets at cost rather than current value reinforces this practice. Claimant asserts that, it is extremely difficult to assess the cost of important trademarks except for such cost items as legal fees, which are usually a nominal amount compared with the advertising expenses required to establish importance in a trademark. The amount of \$50,000 in this connection was included in a letter of December 15, 1951 of Edward C. Kline, President of ESBIC Corporation, S.A., to the President of the Supreme Court of Justice of Cuba, and according to claimant, was so included on the advice of Cuban counsel.

Claimant further states that at the time ESBIC's assets were confiscated in 1961, ESBIC assumed that within a few months or years it would be possible to resume normal business activity in Cuba; and further to this assumption, that ESBIC believed that when it was able to return to Cuba, the confiscated tangible assets would not be returned in as good condition as they were left, and that it would be necessary to replace them all. Claimant asserts that, since the replacement costs of these assets were expected to exceed the book value less accumulated depreciation of the old assets, Mr. Kline selected the estimated replacement costs as being the proper measure of damage to ESBIC. Mr. Kline's letter (supra) notes this, stating that ESBIC "suffered the damages which are further related in accordance with the balance sheet prepared as of February 28, 1961, as adjusted to include the amounts that we will need in order to substitute the lost assets", and that a similar practice was not applied to the remaining physical assets which would require replacement, that is, the inventory accounts, since the principal component in the inventory was lead, and the value of lead fluctuates considerably.

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant including the evidence submitted as to book value and explanations as to damages and cost of replacement. The Commission holds that the value of the Cuban branch of ESBIC Corporation, S.A., as reflected by the balance sheet of February 28, 1961, is the most appropriate basis of evaluation in this case. Accordingly, the Commission finds that the value of the Cuban branch of ESBIC Corporation S.A., at the time of intervention was \$58,159 and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the intervention of the Cuban branch of its wholly owned subsidiary, ESBIC Corporation, S.A., by the Government of Cuba on May 5, 1961.

However, the liabilities listed in the balance sheet of February 28, 1961 include the following:

| | |
|--|----------------|
| Accounts Payable ESB International, S.A. | \$ 35,965 |
| Accounts Payable ESBIC Corporation, S.A. | <u>207,711</u> |
| | \$243,676 |

The Commission finds that \$243,676 was the total amount of debts due and payable to INTERNATIONAL GROUP, THE ELECTRIC STORAGE BATTERY COMPANY directly and indirectly, from the Cuban branch of ESBIC Corporation, S.A., at the time of intervention of its business by the Government of Cuba on May 5, 1961, and concludes that claimant also suffered a loss in that amount within the meaning of Title V of the Act as a result of the intervention of the debtor enterprise by the Government of Cuba on May 5, 1961.

In summary, the Commission concludes that claimant suffered the following losses within the meaning of the Act as a result of actions by the Government of Cuba:

| | |
|---|------------------|
| Intervention of subsidiary's enterprise | \$ 58,159 |
| Debts due from intervened enterprise | <u>\$243,676</u> |
| | \$301,835 |

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the losses sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 5, 1961, 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 THE ELECTRIC STORAGE BATTERY COMPANY 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 Hundred One Thousand Eight Hundred Thirty-Five Dollars (\$301,835.00), with interest thereon at 6% per annum from May 5, 1961 to the date of settlement.

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

23 AUG 1967

CERTIFICATION

Edward D. Re

Edward D. Re, Chairman

**is is a true and correct copy of the decision
the Commission which was entered as the final
cision on** 10-4-67

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

James M. ...
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).)

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Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by the INTERNATIONAL GROUP, THE ELECTRIC STORAGE BATTERY COMPANY, for \$408,825.00 based upon the taking by the Government of Cuba of property of a Panamanian corporation, ESBIC Corporation, S.A.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 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.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking.

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 ELECTRIC STORAGE BATTERY COMPANY has certified that it is a New Jersey corporation and that at all times between its incorporation in 1888, and presentation of this claim on October 18, 1966, more than 50% of the outstanding capital stock of THE ELECTRIC STORAGE BATTERY COMPANY has been owned by United States nationals. It appears that THE ELECTRIC STORAGE BATTERY COMPANY is a national of the United States within the meaning of Section 502(1)(A) of the Act.

It further appears that THE ELECTRIC STORAGE BATTERY COMPANY owns 2,930 of the 3,000 outstanding shares of stock of ESBIC Corporation, S.A., and it is contended that the property directly owned by ESBIC Corporation, S.A., in a very real sense, is owned by THE ELECTRIC STORAGE BATTERY COMPANY indirectly.

ESBIC Corporation, S.A., is not a Cuban corporation whose corporate entity has been destroyed by Cuba. In such case its possible American stockholders might have a claim against the Government of Cuba. Moreover, and in the same such case, if THE ELECTRIC STORAGE BATTERY COMPANY did not qualify as a United States national, its stockholders might

possibly assert indirect ownership of a directly owned Cuban subsidiary. On the contrary, however, so far as the record shows, the Panamanian corporation remains intact, an entity capable of transacting business, incurring debts and holding property.

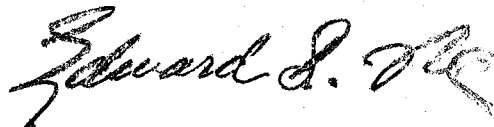
The Commission finds it unnecessary to determine the status of the properties in Cuba, subject of this claim, holding that any claim which may have arisen under international law in connection therewith, belongs to ESBIC Corporation, S.A., of the Republic of Panama, and not to the claimant herein.

Accordingly, the Commission concludes that this claim is not valid under Title V of the Act in that it was not owned by a national of the United States on the date of filing with the Commission and, therefore, it is hereby denied. (See the Claim of Becton, Dickinson and Company, FCSC Claim No. CU-0113.)

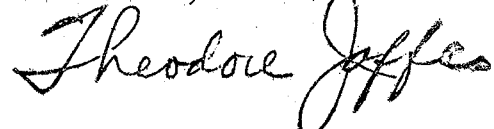
The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

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

NOV 2 1966



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))