

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

IN THE MATTER OF THE CLAIM OF

FIRESTONE TIRE & RUBBER COMPANY

Claim No. CU -1330

Decision No. CU **3338**

Under the International Claims Settlement  
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, for \$8,878,866.00, was presented by FIRESTONE TIRE & RUBBER COMPANY, based upon the nationalization of its wholly-owned subsidiary, Firestone Tire & Rubber Company of Cuba, S.A., by the Government of Cuba, and debts due from that subsidiary.

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.

The claimant corporation was organized in the State of Ohio. An officer of the corporation has certified that at all pertinent times more than 50% of the outstanding capital stock of claimant was owned by United States nationals. Claimant states that 99.7% of its outstanding capital stock was 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.

The Commission finds on the basis of the evidence of record that claimant was the sole stockholder of Firestone Tire & Rubber Company of Cuba, S.A., a corporation existing under the laws of the Republic of Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Firestone Tire & Rubber Company of Cuba, S.A. Accordingly, the Commission finds that claimant's wholly-owned subsidiary was nationalized by the Government of Cuba on October 24, 1960.

The record discloses that Firestone Tire & Rubber Company of Cuba, S.A., was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, Firestone Tire & Rubber Company of Cuba, S.A., may not file a claim under the Act.

However claimant, as a United States national, is entitled to file this claim based upon its ownership of the shares in question.

(See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission concludes that as a result of the nationalization by the Government of Cuba of Firestone Tire & Rubber Company of Cuba, S.A., claimant suffered a loss within the meaning of Title V of the Act.

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, going concern value or cost of replacement.

The question, in all cases, is to determine the basis of valuation which, under the particular circumstances, is most appropriate to the property and equitable to the claimant. The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, and cost of replacement.

Claimant has submitted a copy of its audited consolidated balance sheet as of July 31, 1960 indicating that the financial condition of Firestone Tire & Rubber Company of Cuba, S.A., was as follows:

ASSETS

Cash

In Banks	\$ 154,764.00
On Hand	1,000.00
Deposits for Exchange Remittances	<u>548,022.00</u>
TOTAL	703,786.00

Receivables

Customers' Accounts	1,686,932.00
Customers' Notes	378,418.00
Suspense	20,629.00
Transportation Claims	106.00
Employee Purchases	2,023.00
Others	<u>1,185.00</u>
TOTAL	2,089,293.00

Less: Reserves

Bad Accounts	104,853.00
Rebates	40,666.00
Cash Discounts	<u>6,741.00</u>
Total	<u>152,260.00</u>

Net Receivables 1,937,033.00

Inventories

Raw Materials	343,886.00
Supplies	93,704.00
Sales Tax & Prepaid Duties	<u>30,421.00</u>
	468,011.00
Finished Goods	1,038,634.00
Work in Progress	91,918.00
Sales Tax & Prepaid Duties	<u>108,288.00</u>
TOTAL INVENTORIES	1,706,851.00

Miscellaneous Accounts & Advances

34,543.00

Fixed Assets - Cost

Land	288,031.00
Buildings & Building Fixtures	927,979.00
Machinery & Equipment	2,428,299.00
Molds	17,177.00
Liners	2,000.00
Autos & Trucks	44,187.00
Furniture & Fixtures	272,513.00
Mechanical & Spare Parts Stores	34,193.00
In Process	<u>21,840.00</u>
TOTAL	4,036,219.00

Less: Depreciation on Fixed Assets

Buildings and Building Fixtures	77,167.00
Machinery & Equipment	498,604.00
Autos & Trucks	18,944.00
Furniture & Fixtures	<u>75,361.00</u>
Total Depreciation	670,076.00

Fixed Assets - Net

Land	288,031.00
Buildings & Building Fixtures	850,812.00
Machinery & Equipment	1,929,695.00
Molds	17,177.00
Liners	2,000.00
Autos & Trucks	25,243.00
Furniture & Fixtures	197,152.00
Mechanical & Spare Parts Stores	34,193.00
In Process	<u>21,840.00</u>
TOTAL NET (FIXED ASSETS)	3,366,143.00

Assets (cont'd)

<u>Prepaid &amp; Deferred Accounts</u>	<u>151,310.00</u>
TOTAL ASSETS	<u>\$7,899,666.00</u>

LIABILITIES

Bank Loans

First National City Bank	150,000.00
Banco Nunez	<u>400,000.00</u>
TOTAL	550,000.00

Accounts Payable

Vouchers Payable	53,230.00
Cancelled Checks	13.00
Payroll Deductions	<u>10,634.00</u>
TOTAL	63,877.00

Accrued Expenses

222,396.00

Accrued Taxes

282,553.00

Reserves

Material Price Adjustment	(7,294.00)
Deferred Overhead	<u>79,867.00</u>
TOTAL	72,573.00

Intercompany Accounts

Firestone Tire - Akron	4,201,399.00
Firestone Plantations	2,089,341.00
Firestone - Singapore	242,373.00
Firestone - Brentford	<u>38,289.00</u>
TOTAL	6,571,402.00

Capital Stock

5,000.00

Income Invested in the Business

Surplus	264,424.00
Less: Depreciation Contra Surplus	<u>359,071.00</u>
	(94,647.00)
Current Earnings	<u>226,512.00</u>
TOTAL	131,865.00

TOTAL LIABILITIES AND CAPITAL

\$7,899,666.00

Claimant has also submitted: an affidavit concerning the value of the said real property from Jose J. Trasancos who formerly practiced law in Cuba and had considerable experience respecting land values in the areas where the real property was situated; a statement from Frederick Snare Corporation, which had constructed buildings in Cuba for claimant's subsidiary, concerning construction costs in 1960; copies of deeds to the real property; and statements from other officials of claimant respecting the values of the subsidiary's real and personal properties in Cuba.

On the basis of all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown by the balance sheet of July 31, 1960 with the following adjustments:

The Commission finds that on October 24, 1960, the date of loss, the value of the land was \$1,139,611.00 and that the net value of the buildings and building fixtures, after appropriate deduction for depreciation, was \$978,434.00.

Accordingly, the Commission finds that the assets of claimant's Cuban subsidiary had a value of \$8,878,867.00 on the date of loss, and that the net worth of this subsidiary or the excess of assets over liabilities was the aggregate of the following:

Capital stock	\$	5,000.00
Net surplus		131,865.00
Increase in asset values		979,202.00
Total		<u>\$1,116,067.00</u>

The record establishes that this Cuban subsidiary owed debts to claimant in the amount of \$4,201,399.00 and debts to other wholly-owned foreign subsidiaries of claimant in the aggregate amount of \$2,370,003.00. However, claimant has stated that its British subsidiary, identified as Firestone-Brentford in the said balance sheet, had already received full payment on account of the debt of

\$38,289.00 due from the Cuban subsidiary. Therefore the Commission finds that the aggregate amount of the debts due from claimant's Cuban subsidiary to the other wholly-owned foreign subsidiaries of claimant amounted to \$2,331,714.00, and that claimant qualifies as the proper party claimant with respect to these debts within the meaning of Section 503(a) of the Act. (See Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, 1967 FCSC Ann. Rep. 52.) Accordingly, the Commission finds that the loss sustained by claimant on account of the foregoing debts was \$6,533,113.00, and that this loss occurred on October 24, 1960, when the Cuban subsidiary was nationalized by the Government of Cuba.

Therefore the total loss sustained by claimant was \$7,649,180.00.

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 to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that FIRESTONE TIRE & RUBBER 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 Seven Million Six Hundred Forty-nine Thousand One Hundred Eighty Dollars (\$7,649,180.00) 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

NOV 27 1968

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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).)