

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

IN THE MATTER OF THE CLAIM OF

THE KENDALL COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2370

Decision No. CU  
3025

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$647,175.00, plus interest, was presented by THE KENDALL COMPANY, based upon the nationalization of its wholly owned subsidiary, Manufacturera Kendall de Cuba, 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.

The claimant corporation was organized in the State of Massachusetts. An officer of the corporation has certified that at all times between the date of loss and presentation of this claim, more than 50% of the outstanding capital stock of the claimant 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.

Claimant states that as of April 13, 1967, the portion of claimant's issued and outstanding shares which were not owned by United States nationals was not in excess of one percent.

The Commission finds on the basis of the evidence of record that claimant was the sole shareholder of Manufacturera Kendall de Cuba, S. A., a corporation existing under the laws of the Republic of Cuba.

On January 29, 1963, the Government of Cuba published in its Official Gazette Resolution No. 4, which listed as nationalized, Manufacturera Kendall de Cuba, S. A. Accordingly, the Commission finds that Manufacturera Kendall de Cuba, S. A., was nationalized by the Government of Cuba on January 29, 1963. Having been organized under the laws of Cuba, Manufacturera Kendall de Cuba, S. A., does not qualify as a corporate "National of the United States." Section 502(1)(B) of the Act requires a corporation or other legal entity to have been organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, in order to qualify as an eligible claimant; provided that 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.

In this type of situation it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon its ownership interest therein (See Claim of Parke, Davis Company, 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, 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 stated its loss to be \$647,175.00, basing its estimate of value on the capitalization of the subsidiary's net income, for the years 1956 through 1960, at the rate of 8%. The average annual net income for those years was \$51,774.00. Claimant multiplies this figure by 12.5 to arrive at the claimed value of \$647,175.00. It is noted, however, that this computation covers only the period 1956-1960, while Manufacturera Kendall de Cuba, S.A., was not nationalized by the Government of Cuba until 1963.

Among the documentation submitted is an acceptable balance sheet for Manufacturera Kendall de Cuba, S.A., for the period ending January 26, 1963, reflecting the following:

ASSETS

<u>CURRENT ASSETS</u>	<u>CURRENT PERIOD</u>
NBB - Agcy. 4-10-31 - Operating Acct.-Cuban Cy.	124,666.02
NCB - Agcy. 4-10-36 - Deposit Acct. - Cuban Cy.	68,992.45
NCB - Agcy. 4-10-36 - Operating Acct.-Cuban Cy.	86,344.87
RBC - Agcy. 4-10-01 - Operating Acct.-Cuban Cy.	58,276.91
TCC - Agcy. 4-10-15 - Deposit Acct.-Cuban Cy.	19,316.51
TCC - Agcy. 4-10-15 - Operating Acct.- Cuban Cy.	200.00
Petty Cash	<u>357,796.76</u>
Total Cash on hand	
Deposits Against Letters of Credit	-
Deposits Against Sight Drafts	-
Accounts Receivable - Trade	\$44,958.56
Less: Reserve for Doubtful Accounts	<u>(7,990.89)</u>
Accounts Receivable - Other	36,967.67
Accounts Receivable - The Kendall Company	3,889.20
	779.27
<u>INVENTORIES</u>	
Raw Material	26,879.83
Finished Products	1,507.71
Merchandise in Transit	-
Total Inventories	<u>28,387.54</u>
<b>TOTAL CURRENT ASSETS</b>	<u>427,820.24</u>
Deferred Charges	11,443.15
Fixed Assets - Building	\$72,000.00
Less: Reserve for Depreciation	<u>(4,486.15)</u>
Fixed Assets - Other	67,513.85
Less: Reserve for Depreciation	<u>43,863.90</u>
Bid Deposits	13,857.79
Investments	800.00
<b>TOTAL ASSETS</b>	<u>\$521,436.23</u>
	<u>LIABILITIES &amp; NET WORTH</u>
<u>CURRENT LIABILITIES</u>	\$
Dividends Payable	-
Notes Payable - Bank	-
Wages Payable	(27.73)
Commissions Payable to Salesman	1,119.60
Accounts Payable - Trade	5,102.98
Accounts Payable - The Kendall Company	-
Accrued Income Tax	2,437.93
Other Accrued Taxes	<u>5,435.28</u>
Total Current Liabilities	14,068.06
Accounts Payable - Building	58,500.00
Reserve for Out-freight Losses	400.00
Reserve for Contingencies	-
Total Liabilities	<u>72,968.06</u>
Capital Stock	200,000.00
Surplus	248,259.62
Profit or (Loss)	208.55
Total Net Worth	<u>448,468.17</u>
<b>TOTAL LIABILITIES &amp; NET WORTH</b>	<u>\$521,436.23</u>

The balance sheet includes an item described as "Accounts Receivable - The Kendall Company" in the amount of \$779.27. Since this sum was owed by claimant to its subsidiary, it must be deducted from the value found for Manufacturera Kendall de Cuba, S. A.

The Commission has considered carefully all of the evidence of record, and finds that the net book value of \$447,688.90 for Manufacturera Kendall de Cuba, S. A., is the most appropriate to the property and equitable to the claimant, and concludes that claimant, in its status of indirect owner, suffered a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of Manufacturera Kendall de Cuba, S. A., by the Government of Cuba on January 29, 1963.

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).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from January 29, 1963, 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 KENDALL 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 Four Hundred Forty-Seven Thousand, Six Hundred Eighty-Eight Dollars and Ninety Cents (\$447,688.90) with interest thereon at 6% per annum from January 29, 1963 to the date of settlement.

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

SEP 11 1968

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

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Trolsborg*  
Sidney Trolsborg, 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).)