

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

IN THE MATTER OF THE CLAIM OF

COLUMBIA PICTURES INDUSTRIES, INC.  
COLUMBIA PICTURES INTERNATIONAL CORPORATION  
COLUMBIA PICTURES DE CUBA, S.A.

Claim No. CU-2970

Decision No. CU-6029

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Schwartz, Mermelstein, Burns,  
Lesser & Jacoby  
by Everett A. Frohlich

FINAL DECISION


Under date of January 12, 1971, the Commission issued a Proposed Decision in this matter, listing the counsel for claimant as then of record.

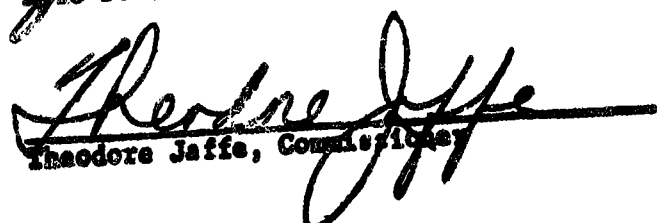
Counsel has under date of February 2, 1971, informed the Commission that as of January 1, 1971, the law firm of Schwartz & Frohlich was to be known as Schwartz, Mermelstein, Burns, Lesser & Jacoby, and that claimants are now so represented.

Accordingly, the matter is amended to reflect the correct name of counsel. No objections having been entered, the Proposed Decision is entered as the Commission's Final Decision in this matter.

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

FEB 17 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Counselor

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Counsel for claimants:

Schwartz & Frohlich  
By: Everett A. Frohlich, Esq.

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 amended amount of \$1,878,808.11, was presented by Columbia Pictures Corporation, COLUMBIA PICTURES INTERNATIONAL CORPORATION, Columbia Pictures Trading Corporation of Cuba, and COLUMBIA PICTURES DE CUBA, S.A., and is based upon the asserted loss of film prints, anticipated film rentals subsequent to loss, and the loss of the assets of the corporation doing business in Cuba and known as COLUMBIA PICTURES DE CUBA, 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) 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) (1970).)

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.

Columbia Pictures Corporation, a New York corporation, hereafter referred to as COLUMBIA, merged with Screen Gems, Inc., on December 28, 1968, after filing the instant claim, and the surviving corporation is known as COLUMBIA PICTURES INDUSTRIES, INC., which is substituted as claimant. However, the respective claims of the original claimant companies are based upon losses which arose prior to merger and they will be so discussed herein except the Certification of Loss concerning COLUMBIA will cover the merged

corporation, with separate Certification to any other claimant as may develop from the record.

The evidence of record discloses that COLUMBIA owned all of the outstanding stock of COLUMBIA PICTURES INTERNATIONAL CORPORATION, a New York corporation, hereafter referred to as COLUMBIA INTERNATIONAL and the Columbia Pictures Trading Corporation of Cuba, a Delaware corporation, hereafter referred to as Columbia Trading. Further, the evidence discloses that COLUMBIA INTERNATIONAL owned all of the stock of COLUMBIA PICTURES DE CUBA, S.A. Additionally, the evidence establishes that Columbia Trading was dissolved on March 1, 1964, as provided by Section 275 of Title 8 of the Delaware corporate law, and COLUMBIA, the sole stockholder, became the successor in interest to all of the assets and liabilities of Columbia Trading.

A corporate official of COLUMBIA, the parent corporation, has certified that at all times from the asserted date of loss in May 1961 to the date of filing this claim in May 1967 more than 50% of the claimant's outstanding capital stock was owned by nationals of the United States. Further, the official stated that on November 24, 1967, COLUMBIA had outstanding 2,247,580 shares of common stock, being the only class of stock outstanding; and that only 123,249 shares of common stock was held by persons with foreign addresses, or approximately 5.5% of the outstanding shares. The Commission finds that COLUMBIA and COLUMBIA INTERNATIONAL are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

For several years prior to the asserted date of loss of the properties, subject of this claim, claimant COLUMBIA distributed film product in Cuba pursuant to a contract with COLUMBIA INTERNATIONAL, the distributor of Columbia product outside of the United States. COLUMBIA INTERNATIONAL utilized the services of COLUMBIA-CUBA, its wholly-owned subsidiary, with which distribution agreements were executed. Thereafter, the film product was distributed throughout Cuba as the subject of contracts between COLUMBIA-CUBA and the Cuban theatre owners or exhibitors and the product was exhibited to the public in the various Cuban theatres in that territory.

COLUMBIA INTERNATIONAL has submitted, among other things, an inventory of film product located in Cuba, assertedly taken by the Government of Cuba from COLUMBIA-CUBA. The inventory includes the various types of film prints which were the subject of distribution and exhibition contracts and included COLUMBIA product and some Spanish or European prints to which rights had been acquired by claimants herein. The inventory included 1,655 prints, such as 35mm and 16mm feature presentations, westerns, serials and short subjects, as itemized hereafter. Based on the aforesaid evidence of record, as well as affidavits and company records submitted by officials of the claimants, the Commission finds that COLUMBIA INTERNATIONAL was at all times pertinent to this claim the owner of the film product, subject of this claim, as further itemized hereafter.

The Commission finds that COLUMBIA-CUBA was formally taken by the Government of Cuba pursuant to Resolution 2868, published by Cuban authorities in the Official Gazette on May 10, 1961, and the Commission further finds that COLUMBIA INTERNATIONAL's inventory was taken at that time.

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 prints shipped to Cuba by COLUMBIA INTERNATIONAL were made from negatives of various productions previously produced by COLUMBIA or other producers, domestic or foreign, from whom COLUMBIA INTERNATIONAL had secured

rights to the prints in question. These prints, apparently shipped to Cuba primarily in the period from 1950 to 1960, had been exhibited or were to be exhibited in various areas or exhibition zones in Havana, other cities in Cuba, or areas throughout the smaller towns and hamlets. Thus, the product was in various stages of the depletion cycle, applicable to such product, at the time of loss, with some prints apparently in active use in the exhibition zones, others in a re-run category, while others were to be junked as no longer having utility for exhibition purposes.

Officials of the claimants have submitted their affidavits and statements, with cost figures from Technicolor, Pathe and other manufacturers of the prints, indicating the cost of manufacturing film product in the years immediately prior to loss, including cost per foot of black and white prints, or those in color, along with incidental charges, such as shipping or custom expenses. Claimants have computed a value of the prints on a replacement or cost when new basis, with incidental charges added thereto; and the total value of the product in Cuba was asserted to be in the amount of \$648,878.11 at the time of loss.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the most appropriate basis for evaluating the film product at the time of loss is to consider factors relating to cost of manufacture and shipment, as well as depreciation incident to the shipment, exhibition and storage of the product in Cuba. The Commission has considered these factors, including those relating to depreciation of the film products, and finds that the reasonable value of the prints is as follows:

CU-2970

RECAPITULATION

<u>Type of Print</u>	<u>Number of Prints</u>	<u>Average Footage</u>	<u>Depreciated Value per Print</u>	<u>Total Value</u>
<u>35mm Features</u>				
Black and White	373	9,000	\$150.00	\$ 55,950.00
Color	221	10,000	300.00	66,300.00
Westerns	174	6,500	150.00	26,100.00
Serials	40	26,000	600.00	24,000.00
<u>Shorts</u>				
Black and White	129	1,300	35.00	4,515.00
Color	65	800	50.00	3,250.00
<u>Spanish</u>				
Black and White	227	10,000	150.00	34,050.00
Color	6	10,000	300.00	1,800.00
<u>16mm Features</u>				
Black and White	108	3,600	50.00	5,400.00
Color	16	4,000	100.00	1,600.00
Westerns	24	2,600	50.00	1,200.00
Serials	11	10,400	200.00	2,200.00
<u>Spanish</u>				
Black and White	62	4,000	50.00	3,100.00
Color	2	4,000	100.00	200.00
<u>Shorts</u>				
Black and White	131	520	15.00	1,965.00
Color	<u>66</u>	320	15.00	<u>990.00</u>
	1,655			\$232,620.00

Additionally, the Commission has considered the portion of the claim asserted for loss of the trailers or advertising accessories in the amount of \$14,997.00 and finds that this sum represents a reasonable value of such materials located in Cuba and taken by the Government of Cuba. Accordingly, the Commission finds that COLUMBIA INTERNATIONAL suffered a loss in the total amount of \$247,617.00 within the meaning of Title V of the Act, as a result of the taking of its film product by the Government of Cuba on May 10, 1961.

As indicated above, COLUMBIA INTERNATIONAL also suffered a loss when the Government of Cuba seized its wholly-owned subsidiary COLUMBIA-CUBA on May 10, 1961. Since COLUMBIA-CUBA, was organized under the laws of Cuba, it does not

qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. Accordingly the claim of COLUMBIA-CUBA is denied. In this type of situation, however, it has been held that an American stockholder may file a claim for the value of its ownership interest. (See the Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

COLUMBIA INTERNATIONAL has submitted evidence pertaining to the value of the Cuban subsidiary, including affidavits and a certified balance sheet, dated May 27, 1961, which was prepared immediately after the date of loss; trial balances and profit and loss statements. Claimant has also submitted supplementary information with respect to the assets and liabilities of COLUMBIA-CUBA including banking statements, statements of accounts due and payable, showing not only assets but certain debts payable to claimants by the Cuban subsidiary at the time of loss.

The balance sheet of COLUMBIA-CUBA, dated May 27, 1961, reflects the following (the peso being on a par with the dollar):



ASSETS

Current Assets

Cash in Bank and on Hand			
Bank		\$379,292.73	
Stamp Fund		90.00	
Petty Cash		250.00	
Undeposited Collections		<u>1,618.09</u>	\$381,250.82

<u>Accounts Receivable</u>			72,197.41
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Fixed Asset Accounts

Furniture and Fixtures	\$29,445.20		
Other Fixed Assets	<u>44,880.00</u>	74,325.20	
Less - Reserve for Dep. and Amort.		<u>-24,003.40</u>	50,321.80

<u>Guarantee Deposits</u>			180.00
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Deferred Charges

Prepaid Expenses			934.79
Suspense			<u>58,811.44</u>

Total Assets			<u>\$563,696.26</u>
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LIABILITIES AND CAPITAL

Current Liabilities

Accounts Payable (Credit Balance Only)		\$ 79.10	
Reserve for Income Taxes		3,810.69	
Reserves (other)		<u>1,963.71</u>	\$ 5,853.50

<u>Advance Payments (Exhibitors Credit Balance)</u>			1,221.26
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Notes Payable

Columbia Films S.A. Francia			(654.00)
Columbia Pictures Trading Corp. of Cuba			
Local			439,942.22

Due to Columbia Pictures Int'l. Corp. Local Currency Account			37,600.76
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<u>Pending Payments on Properties</u>			41,888.00
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Capital Stock

Authorized		<u>\$ 50,000.00</u>	
Issued and Outstanding			2,000.00

<u>Surplus</u> May 28, 1960		35,900.83	
Loss - 12 Months Ending May 27, 1961		<u>(56.31)</u>	<u>35,844.52</u>

Total Liabilities and Capital			<u>\$563,696.26</u>
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The Commission finds that the above balance sheet appropriately reflects the financial status of the firm on or about May 10, 1961, the date of loss. Since this is a Cuban enterprise, it is necessary to establish the net worth of this subsidiary and the Commission finds that COLUMBIA-CUBA had a net worth of \$37,844.52 on May 10, 1961, the date of loss.

According to the balance sheet, there were intercompany debts of the Cuban subsidiary payable to COLUMBIA INTERNATIONAL and Columbia Trading, consisting of accounts in the amounts of \$37,600.76 and \$439,942.22, respectively. Accordingly, the Commission finds that claimants COLUMBIA INTERNATIONAL and Columbia Trading also suffered losses in the aforesaid amounts of \$37,600.76 and \$439,942.22 within the scope of Title V of the Act as a result of the taking of the Cuban corporation by the Government of Cuba on May 10, 1961. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Since Columbia Trading was dissolved on March 1, 1964, and COLUMBIA became the successor in interest to its assets, the Commission finds that COLUMBIA succeeded to the claim for the loss in the amount of \$439,942.22. Additionally, pursuant to the merger of COLUMBIA with Screen Gems, Inc., on December 28, 1968, the surviving corporation, COLUMBIA PICTURES INDUSTRIES, INC., then succeeded to the claim for such loss in the amount of \$439,942.22.

Product owned by COLUMBIA or others was transferred to COLUMBIA INTERNATIONAL and to COLUMBIA-CUBA, pursuant to agreements between the parties, for distribution of the product in Cuba. The agreements for exhibition of the product in Cuba were apparently made on "block booking" arrangements with the Cuban exhibitors whereby contracts were made for the film products several weeks in advance. Such agreements assertedly provide for the booking and exhibition by the theatre owners of several feature presentations, with fillers, trailers or short subjects, which were to be furnished by the distributors.

The claimants have included in the amended claim a sum for loss of prospective earnings or anticipated profits which might have been realized by claimants had not the Government of Cuba seized their property on May 10, 1961. The claimants have asserted that the prints, aside from the physical attributes, as discussed above, contained a series of images on the film which not only were unique in nature but were the primary things of value as the subject of the contracts between claimants and the subsidiary, COLUMBIA-CUBA, and those contracts between the distributor and exhibitors in Cuba.

The Commission has carefully considered the claim asserted for loss of anticipated film rental income had not the Government of Cuba intervened. However, claims based on the loss of prospective earnings are generally not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration", and goes on to say:

"This award (in the Alabama case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

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"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage. \*\*\* Domestic commissions have reached the same conclusion without specific direction from Congress."

The Commission finds that the portion of the instant claim based on prospective film rentals for the period beginning May 10, 1961, is not compensable under the Act. The profits or earnings of the Cuban enterprise, if any, which may have been realized during the period in question did not belong to the claimants since their title in and to the enterprise and film product was extinguished when the Government of Cuba intervened. However,

claimants are being allowed interest on the value of the property taken by the Cuban Government, as discussed hereafter. Accordingly, the portion of the claim based on film rental or profits for the period following intervention on May 10, 1961, is denied for the reason that the record contains no evidence to show that any profits belonging to the claimants were taken by the Government of Cuba. (See Claim of United Shoe Machinery Corporation, Claim No. SOV-40,353, 10 FCSC Semiann. Rep. at 238; Claim of Aris Gloves, Inc., Claim No. CZ-1170, 17 FCSC Semiann Rep. 239 [July-Dec. 1962]; and Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225.)

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:

<u>FROM</u>	<u>ON</u>
COLUMBIA PICTURES INDUSTRIES, INC. May 10, 1961	\$439,942.22
COLUMBIA PICTURES INTERNATIONAL CORPORATION May 10, 1961	\$323,062.28


CERTIFICATIONS OF LOSS

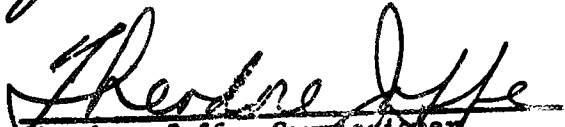
The Commission certifies that COLUMBIA PICTURES INDUSTRIES, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Thirty-Nine Thousand Nine Hundred Forty-Two Dollars and Twenty-Two Cents (\$439,942.22) with interest thereon at 6% per annum from May 10, 1961 to the date of settlement; and

The Commission certifies that COLUMBIA PICTURES 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 Three Hundred Twenty-Three Thousand Sixty-Two Dollars and Twenty-eight Cents (\$323,062.28) with interest thereon at 6% per annum from May 10, 1961 to the date of settlement.

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

JAN 12 1971

  
Lyle S. Garlock, Chairman

  
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 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. 31.3(e) and (g), as amended (1970).)