

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

IN THE MATTER OF THE CLAIM OF

TECON CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0455

Decision No. CU
3061

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 TECON CORPORATION in the amended amount of \$1,811,408.91 plus interest. This claim is asserted in part for materials and equipment sold and delivered together with services rendered to an entity of the Government of Cuba, Primera Central Hidroelectrica Cubana (hereinafter referred to as PRICHEC). The remaining portion of this claim is based upon the ownership of a bank account in 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.

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.

An officer of the claimant corporation has certified that the claimant was organized in Delaware and that at all times between March 8, 1947 and presentation of this claim on September 23, 1965, 100% 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.

(A) CLAIM AGAINST PRICHEC

This claim is asserted for the principal sum of \$1,177,950.10 said to be due from an entity of the Government of Cuba, Primera Central Hidroelectrica Cubana (PRICHEC), for services rendered and equipment and materials sold pursuant to Contract No. C-1, entered into between claimant and PRICHEC on January 6, 1956. A copy of Contract C-1 (English translation) is of record.

The contract involves the construction, by claimant, of a hydroelectric dam and power plant, known as the Hanabanilla Project, in the province of Las Villas, Cuba. The amount asserted as due from PRICHEC is computed as follows:

1. Unpaid balance due on agreed settlement of August 1959 \$213,190.97
2. Contract retainage due under Contract C-1 as set forth in "Provisional Final Acceptance" of May 19, 1960 \$391,066.51
3. Sale of equipment and material under Paragraph G-33 of General Specifications of Contract C-1 \$573,692.62

These items will be considered in order.

(1) A copy (English translation) of the August 1959 settlement is of record. The agreement provided for the settlement of certain claims by the Contractor (claimant) against PRICHEC for damages and losses due to occurrences during the Contractor's performance of Contract C-1 and of certain claims by PRICHEC for liquidated damages resulting from delays in the construction. The third paragraph of the agreement provided for the partial settlement of these claims by set-off and the deduction from the balance due the Contractor of \$184,107.29, the amount of certain advances made by PRICHEC. After set-off and deduction, the balance stated as due the Contractor was \$327,190.97.

The agreement provided for the payment of the outstanding balance in \$10,000.00 monthly installments until the completion of all of the work in charge of the Contractor and its acceptance by PRICHEC, at which time the remaining balance would be paid.

Claimant acknowledged the receipt of \$40,000.00 in cash from PRICHEC, pursuant to the settlement agreement. Claimant has also reduced the outstanding balance by \$74,000.00 which represents additional liquidated damages for 37 days' delay. Deducting these two items (totalling \$114,000.00) from \$327,190.97 leaves \$213,190.97, the balance due on this portion of the claim.

(2) Claimant also asserts that "contract retainage" in the amount of \$391,066.51 is due from PRICHEC pursuant to the "Provisional Final Acceptance Document of Works" entered into between claimant and PRICHEC on May 19, 1960. A Spanish language copy of the "Provisional Final Acceptance" and an English translation are of record. The provisions of this document include the following:

Therefore, once the "Provisional Final Acceptance Document of Works" is approved by PRICHEC, it is lawful to make restitution to the Contractor in the amount of: THREE HUNDRED NINETY-ONE THOUSAND, SIXTY-SIX DOLLARS AND FIFTY-ONE CENTS (\$391,066.51) National Currency, equivalent to the total cost retained from the works that are accepted by means of this present Document.

No portion of this sum was restored to claimant.

(3) Additionally, claimant asserts that \$573,692.62 is due from PRICHEC in payment for the sale and delivery of equipment and materials to PRICHEC under paragraph C-33 of the General Specifications of Contract C-1. A copy of the General Specifications is of record, together with copies of invoices which reflect that PRICHEC had purchased and received the equipment and materials described therein. The terms stated in the invoice are "net cash".

There follows a listing of the invoices of record including the date, numbers, and total of amounts stated in the invoices of the same date:

<u>Date</u>	<u>Invoice Numbers (Inclusive)</u>	<u>Amount</u>
March 16, 1960	246001-246003	\$ 18,085.69
March 18, 1960	246004-246021	82,442.71
March 23, 1960	246022	9,286.51
March 25, 1960	246023-246026, 246028	3,922.98
March 26, 1960	2460029-2460036, 2460038-2460044	21,843.11
March 28, 1960	2460027, 2460037	377.00
March 29, 1960	2460045-2460049	1,982.14
March 30, 1960	2460050-2460059, 2460063-246064	30,344.01
March 31, 1960	2460060-2460062	9,647.33
April 6, 1960	2460065-2460068	9,572.01
April 7, 1960	2460069	160.00
April 8, 1960	2460070	55.00
April 11, 1960	2460071-2460073	1,058.36
April 20, 1960	2460074-2460080	5,356.62
May 11, 1960	2460081-2460083	5,616.53
May 13, 1960	2460084-2460093	25,662.95
May 14, 1960	2460094-2460105	7,061.26
May 16, 1960	2460106-2460140	131,981.87
May 17, 1960	2460141	3,941.46
May 19, 1960	2460177	208.12
May 21, 1960	2460142-2460176, 2460178-2460183	111,257.08
May 24, 1960	2460184-2460191, 2460195	5,302.26
May 25, 1960	2460192-2460194	17,928.25
May 26, 1960	2460196-2460205	36,965.00
May 27, 1960	2460206-2460214	5,193.99

<u>Date</u>	<u>Invoice Numbers (Inclusive)</u>	<u>Amount</u>
May 28, 1960	2460215	\$ 15,723.95
May 30, 1960	2460216-2460228	6,223.75
May 31, 1960 June 1, 1960	2460229-2460234	3,650.74
June 6, 1960	2460235	97.00
June 7, 1960	2460236	363.12
June 11, 1960	2460237-2460240	<u>2,381.82</u>
	Total	\$ 573,692.62

The Commission holds that the debts of Primera Central Hidroeléctrica Cubana (PRICHEC), as debts of an entity of the Government of Cuba, constitute "property" within the meaning of the term as defined in Section 502(3) of the Act. Accordingly, on the basis of evidence of record, the Commission finds that claimant suffered a loss in the amount of \$1,177,950.10, representing the total amount due claimant from PRICHEC.

The Commission further holds that, in the absence of evidence to the contrary, the loss occurred: (1) as to \$213,190.97 on November 1, 1959, the date of PRICHEC's first default in payment of the monthly installments due under the August 1959 settlement, (2) as to \$391,066.51 on May 19, 1960, the date of the "Provisional Final Acceptance", and (3) as to \$573,692.62, that the invoiced amounts in payment for equipment and material sold PRICHEC were due and payable 30 days after the respective dates of the invoices, and the losses occurred on the due dates as thus determined.

(B) BANK ACCOUNT

Claimant also states that it had lost a bank account in Cuba having a balance of 197,442.34 pesos. The record establishes that claimant had a balance of 202,829.43 Cuban pesos on deposit in its checking account at The Trust Company of Cuba, Obispo 257, Havana, Cuba on July 19, 1960. Claimant states that it was advised in May 1960 that the funds in such bank accounts could not be brought back to the United States or otherwise

taken out of Cuba. Claimant acknowledges that subsequent to July 19, 1960, certain checks were drawn against the account to pay local obligations within Cuba. The outstanding balance after deduction of these checks is \$197,442.34.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affect the account of the claimant in Claim No. CU-0455.

Law 568, published in the Cuban Official Gazette on September 29, 1959, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to centralize liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as claimant's. The record shows that claimant corporation was no longer present in Cuba on the effective date of Law 989. In the absence of evidence to the contrary, the Commission finds that claimant's above-described bank account, totalling 197,422.34 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]).

As to the dollar value of the peso amounts due claimant from PRICHEC, and the bank account expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the dates of loss.

Claimant has asserted, in addition to the above losses, a loss in the amount of \$436,016.47 as interest from the various dates of loss to July 23, 1965. However, the Commission has previously adopted its own rule as to how interest shall be computed on the Cuban claims and so will not approve that amount. 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 the dates on which the losses occurred, to the date on which provisions are made for settlement thereof, as follows:

On	\$ 213,190.97	From	November 1, 1959
On	18,085.69	From	April 16, 1960
On	82,442.71	From	April 18, 1960
On	9,286.51	From	April 23, 1960
On	3,922.98	From	April 25, 1960
On	21,843.11	From	April 26, 1960
On	377.00	From	April 28, 1960
On	1,982.14	From	April 29, 1960
On	30,344.01	From	April 30, 1960
On	9,647.33	From	May 1, 1960
On	9,572.01	From	May 6, 1960
On	160.00	From	May 7, 1960
On	55.00	From	May 8, 1960
On	1,058.36	From	May 11, 1960
On	391,066.51	From	May 19, 1960
On	5,356.62	From	May 20, 1960
On	5,616.53	From	June 11, 1960
On	25,662.95	From	June 13, 1960
On	7,061.26	From	June 14, 1960
On	131,981.87	From	June 16, 1960
On	3,941.46	From	June 17, 1960
On	208.12	From	June 19, 1960
On	111,257.08	From	June 21, 1960
On	5,302.26	From	June 24, 1960
On	17,928.25	From	June 25, 1960
On	36,965.00	From	June 26, 1960
On	5,193.99	From	June 27, 1960
On	15,723.95	From	June 28, 1960
On	6,223.75	From	June 30, 1960
On	3,650.74	From	July 1, 1960
On	97.00	From	July 6, 1960
On	363.12	From	July 7, 1960
On	2,381.82	From	July 11, 1960
On	197,442.34	From	December 6, 1961

\$1,375,392.44 Total

CERTIFICATION OF LOSS

The Commission certifies that TECON 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 One Million Three Hundred Seventy-Five Thousand Three Hundred Ninety-Two Dollars and Forty-Four Cents (\$1,375,392.44) 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

SEP 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)