

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

IN THE MATTER OF THE CLAIM OF

SAMUEL BERGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1327

Decision No. CU 3532

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$72,593.05, was presented by SAMUEL BERGER based upon an asserted loss sustained in connection with the ownership of a stock interest in Compania de Transporte Mar Caribe, S.A. Claimant has been a national of the United States since his birth.

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 record contains an original stock certificate for 270 shares each for 100 pesos in the aforementioned enterprise issued to the claimant on May 29, 1951. On the basis of all of the evidence of record, the Commission finds that claimant owned continuously from the date of loss to the presentation of this claim, 270 shares of stock issued by Compania de Transporte Mar Caribe, S.A.

On August 8, 1961, the Government of Cuba published in its Official Gazette Resolution No. 4, pursuant to Law 890, listing as nationalized, Compania de Transporte Mar Caribe, S.A. Accordingly, the Commission finds that Compania de Transporte Mar Caribe, S.A. was nationalized by the Government of Cuba on August 8, 1961.

Among the documentation submitted is a balance sheet of Compania de Transporte Mar Caribe, S.A., dated September 30, 1960, which reflects the following:

A S S E T S

Current Assets:

Cash		\$ 9,891.19
Accounts receivable		65,598.14
Miscellaneous advances		17,048.26
Prepaid insurance		36,117.61
Miscellaneous prepaid expenses		250.01
Claims against insurance companies		<u>443.76</u>
		\$129,348.97

Fixed Assets:

Watercraft	\$1,084,927.30	
Less: Accumulated depreciation	<u>346,577.72</u>	738,349.58
Furniture and equipment	\$ 6,241.60	
Less: Accumulated depreciation	<u>1,524.88</u>	4,716.72

Deferred Charges:

Guarantee deposit	\$ 220.00	
Watercraft repairs (amortized monthly)	<u>22,975.57</u>	<u>23,195.57</u>
		\$895,610.84

LIABILITIES

Current Liabilities:

The First National Bank of Boston - Overdraft	\$ 5,724.56
First of Boston Intern. Corp. - Overdraft	7,674.80
Accounts payable	52,724.85
Promissory notes payable	101,850.00
Loan from I.N.R.A. (due in one year)	60,000.00
Accrued vacations and holidays	11,306.29
Social Security for the crew and taxes payable	12,832.90
Accrued interest	3,055.00
Miscellaneous accrued expenses	<u>374.94</u>
	\$255,543.34

Long-term Debt:

Loan from I.N.R.A. (due after one year)	285,000.00
<u>Reserve for contingent insurance</u>	\$ 36,000.00
Less: Accident of Farovi	\$ 4,094.51
Watercraft	<u>500.00</u>
	<u>3,594.51</u>
	<u>31,405.49</u>
	\$571,948.83

Capital and Surplus:

Authorized and outstanding capital stock	\$100,000.00
Surplus:	
Balance January 1, 1960	\$196,533.31
Add: Income up to	
September 30, 1960	<u>25,436.07</u>
	\$221,969.38
Add: Prior years	
adjustments	<u>1,692.63</u>
	<u>223,662.01</u>
	<u>323,662.01</u>
Total	\$895,610.84

The record indicates that Compania de Transporte Mar Caribe, S.A. had outstanding at the time of loss 1,000 shares of common stock at 100 pesos par value.

The claimant stated that all of the assets of Compania de Transporte Mar Caribe, S.A. were in Cuba at the time of confiscation with the exception of the tanker "Mar Caribe" which was libeled by creditors and sold at public auction on July 15, 1961 by the U. S. Marshall of Corpus Christi, Texas. After payment of creditors' claims, the remaining proceeds of the sale were distributed among the stockholders. Claimant's net share was asserted to be \$14,795.69. The claimant owned 27% of the shares outstanding. The Commission, accordingly, finds that the net worth of the corporation was diminished after the preparation of the balance sheet due to the sale and the distribution to the stockholders of the excess proceeds in the sum of \$54,800.00.

Accordingly, the net worth of the company at the time of loss is computed as follows:

Assets per balance sheet	\$895,610.84
Less Liabilities per balance sheet	<u>571,948.83</u>
Net Worth per balance sheet	\$323,662.01
Less distribution	<u>54,800.00</u>
	\$268,862.01

The Commission therefore finds that the net worth at the time of loss was \$268,862.01, or \$268.862 per share of the subject stock. Accordingly, the Commission concludes that claimant as holder of 270 shares of the aforementioned stock suffered a loss in the amount of \$72,592.74 within the meaning of Title V of the Act, as a result of the nationalization of Cia. de Transporte Mar Caribe, S.A. by the Government of Cuba on August 8, 1961.

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 SAMUEL BERGER 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 Seventy-two Thousand Five Hundred Ninety-two Dollars and Seventy-four Cents (\$72,592.74) with interest at 6% per annum from August 8, 1961 to the date of settlement.

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

FEB 26 1969

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)