

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

IN THE MATTER OF THE CLAIM OF

INDEPENDENCE FOUNDATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2152

Decision No. CU
3718

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 INDEPENDENCE FOUNDATION in the amount of \$250,250.00, based upon its asserted ownership of a stock interest in Compania Antillana de Acero, S.A. (Antillian Steel Corporation), and the intervention of that enterprise 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.

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.

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 claimant corporation has certified that INDEPENDENCE FOUNDATION (formerly known as Donner Foundation (Incorporated)) was organized in 1947 in the State of Delaware as a charitable membership corporation which issued no shares of stock, and that at all times between March 25, 1960 and the presentation of this claim on April 26, 1967 all the members thereof were nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Ford Motor Company, Claim No. HUNG-20027, Dec. No. HUNG-2116, 10 FCSC Semiamm. Rep. 80 (Jan.-June 1959); cit. beg. at page 171 FCSC Dec. & Ann. 1968.)

Claimant has submitted copies of stock certificates, purchase slips, correspondence regarding the stock purchase, and Resolution No. 1 of the Cuban Ministry of Finance dated March 25, 1960. On the basis of the evidence of record, the Commission finds that claimant was the owner of 2,500 shares of stock in Antillian Steel Corporation on March 25, 1960 when that enterprise was intervened by the Government of Cuba under Resolution No. 1 of the Ministry of Finance.

As a corporation organized under the laws of Cuba, Antillian Steel Corporation does not qualify as a corporate national of the United States under Section 502(1)(B) of the Act, and may not file a claim under the Act. Accordingly the claimant, as a United States national, is entitled to file this claim based upon its ownership of shares of stock in the Cuban corporation; and the Commission concludes that claimant suffered a loss within the meaning of Title V of the Act as a result of the intervention by the Government of Cuba of Antillian Steel Corporation.

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". 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, or cost of replacement.

Claimant has submitted a certified balance sheet for Antillian Steel Corporation as of June 30, 1957, as follows:

Assets

Plant under Construction		
Distributed Costs		
Land	\$ 135,792.34	
Furnishings and Auto	<u>6,637.75</u>	\$ 142,430.09
Costs to be Distributed		
Work in Progress	157,928.77	
Construction Materials, Tools, Fuels, etc., on Hand	<u>50,847.45</u>	<u>208,776.22</u>
		\$ 351,206.31
Cash in Banks and on Hand		
Trust Co. of Cuba, Banded Loan Acct.	3,092,186.61	
Trust Co. of Cuba, Account No. 200	42,362.25	
Banco de Desarrollo Economico y Social, Special Deposit	500,000.00	
First Natl. City Bank of N.Y.	5,000.00	
Fixed Funds	<u>800.00</u>	3,640,348.86
Subscribers of Stock, Payable on or before 5 Oct. 1959 on Company Request		500,000.00
Stock of Cabillas Cubanas, S.A.		3,500,000.00
Bonds, Banco de Desarrollo Economico y Social (Compania Antillana de Acero, S.A.) 4-3/4%, 1957-1969 (Deposited at Banco de Desarrollo Economico y Social as security)		8,000,000.00
Financing and Organizing Costs		252,290.31
Deposits as security for Tax and Services, Returnable		<u>1,837.00</u>
		\$16,245,682.48

Liabilities

Authorized Capital, 200,000 shares at \$100 Nominal Value	\$20,000,000.00	
Issued and in Circulation 82,000 shares		\$ 8,200,000.00
Mortgage Loan, Payable to Banco de Desarrollo Economico y Social, 5-1/2% (payable in weekly payments of \$400,000 from 5 April 1960 to 5 October 1969)		8,000,000.00
Accounts Payable, for Purchases and Services		44,398.47
Taxes Payable		1,150.01
Deposits Received, Labor Registrations		<u>134.00</u>
		\$16,245,682.48

From the above balance sheet, the net worth of the corporation would appear to have been \$8,200,000.00, or \$100.00 per share of stock outstanding, as of June 30, 1957, two and three-quarters years before the date of intervention. However, certain of the items included as assets were actually expenditures which had been made and which resulted in no tangible assets available for distribution to creditors or stockholders had dissolution occurred at that time. For instance, the sums shown for Work in Progress and for Financing and Organizing Costs include such items as travel expenses, notary fees, legal advice, fees for sale of stock, economic studies, technical reports and supervision, commissions for study of materials and study of salaries and wages, and expenses of a cornerstone laying ceremony. Although the corporation was the sole owner of a steel mill in full operation known as Cabillas Cubanas, S.A., Antillian Steel Corporation had not yet itself entered into production and produced any earnings to offset the expenses shown on the balance sheet as assets. Photographs of the plant site taken in April 1958 show only the skeletal outline of the plant being constructed.

No later balance sheets have been obtainable from this claimant, from other claimants owning stock in Antillian Steel Corporation, or from other sources available to the Commission; but helpful information regarding subsequent progress of the enterprise has been obtained from Kidder, Peabody & Co., Inc., of Philadelphia, Pennsylvania, which managed the sale of stock.

The Antillian operation involved three stages in the production of steel, yielding, in order, ingots, billets (blooms), and finished bars. A report of June 10, 1959 reveals that construction of the new plant was then substantially completed, that the first furnace had been fired on May 4, 1959, and it was expected that the blooming mill would be in operation by June 8, the rolling mill (for finished bars) by June 22, and the whole plant by June 30, 1959. On the other hand, Cabillas Cubanas had been operating at full capacity until May 11 when operations were reduced to one-third in order to transfer employees to Antillian for training in the new plant.

Some over-optimism in the June report for the Antillian Steel Corporation is revealed in a report dated October 20, 1959 of a board meeting held on October 8, 1959. As of that time only one furnace was in operation, with the second expected to be ready by mid-November, when the first would close down for four to five weeks for repairs. Simultaneous production by two furnaces was expected by December, with alternating shut-downs for normal repairs every three to four months. The labor force was not expected to be sufficiently trained to reach maximum production for another 12 to 18 months. Current production was at the rate of 58,800 tons of ingots per year, 33,000 tons in the blooming mill, and 33,000 tons of finished bars from the rolling mill. With the firing of the second furnace and the taking on of a second shift in the blooming mill and a third shift in the rolling mill, annual production was expected to reach 95,000 tons of ingots, and 65,000 tons each from the blooming and rolling mills. As production increased, the production costs per ton decreased; and the break-even point was estimated at 68,400 tons of finished bars per year. It was the belief of the management "that sometime in the future Cabillas may prove a very valuable complement to Antillian."

One further report of January 23, 1964 describes the large expansion program carried on at Antillian Steel Corporation by the Government of Cuba after the intervention.

From the above information, it is apparent that although Antillian Steel Corporation had bright prospects for the future as of March 25, 1960, the date of intervention, it probably had not yet reached its break-even point, and therefore had not yet recouped any of its "starting up" expenses, the benefit of which later accrued to the Government of Cuba.

In the circumstances, the Commission finds that the value of \$100.00 per share of stock, as determined from the balance sheet of June 30, 1957, which is also the amount paid by claimant for its stock on April 15, 1957 is the measure most appropriate to the property and most equitable to the claimant; and concludes that in connection with its ownership of 2,500 shares of stock, claimant suffered a loss in the amount of \$250,000.00 as a result of the intervention by the Government of Cuba of Antillian Steel Corporation on March 25, 1960.

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 INDEPENDENCE FOUNDATION 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 Two Hundred Fifty Thousand Dollars (\$250,000.00) with interest thereon at 6% per annum from March 25, 1960 to the date of settlement.

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

JUN 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).)