

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

IN THE MATTER OF THE CLAIM OF

MARGARET CROFT
ELISE CROFT
GENERAL CONCRETE CONSTRUCTION
COMPANY OF CUBA

Claim No. CU-2213

Decision No. CU 4080

Under the International Claims Settlement
Act of 1949, as amended

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 amount of \$189,498.85, was presented by MARGARET CROFT and ELISE CROFT based upon the asserted ownership and loss of interests in certain real and personal property, including stockholder interests in GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA, as discussed hereafter. Claimants, MARGARET CROFT and ELISE CROFT, have been nationals of the United States since 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.

Claimants contend that they owned certain real and personal property, including all of the outstanding shares of stock of the GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA; and that these properties were confiscated by the Government of Cuba. The record includes information furnished to the Commission from sources in Cuba, a Statement of the former General Manager of the aforesaid corporation, Bradford B. Dallas, dated April 23, 1967, claimants' letters and statements.

On the basis of the entire record, the Commission finds that claimants, MARGARET CROFT and ELISE CROFT, were the owners, in equal parts, of certain real and personal property located at the corner of 19th and F Streets, Lot 1, Block 63, Reparto Medina, Vedado, Havana, Cuba.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

As the record shows, claimants resided outside of Cuba at that time. The Commission finds, in the absence of evidence to the contrary that the subject real property was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

CU-2213

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The lot in Reparto Medina, Vedado, Havana, Cuba, is described as comprising 1,133 square meters of land which is improved by an eight-room, brick and stucco residence with two porches, garage, and two servants' rooms, including household furnishings throughout the house. Based on the entire record, including information available to the Commission concerning the value of similar properties in Havana, Cuba, the Commission finds that at the time of loss the subject improved real property had a total value of \$45,000.00 and the personal property had a total value of \$2,000.00.

Accordingly, the Commission concludes that claimants such suffered a loss in the amount of \$23,500.00 for their respective interests in the real and personal property, within the meaning of Title V of the Act.

With regard to that portion of this claim based upon claimants' asserted ownership of stockholder interests in GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA, claimants have established that they are the sole owners of the stock of this enterprise and that the firm was organized in the State of Delaware.

CU-2213

Section 505(a) of the Act provides that

- (a) A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered

Claimants have asserted claim in their individual capacities for interests in a corporation qualifying as a United States national under the Act. The Commission, however, is precluded under Section 505(a) of the Act, supra, from considering such stockholder claims. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].) However, consideration has been given by the Commission to joining the corporation as a party claimant. Accordingly, this claim is amended to include the GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA as a claimant and the individual stockholder claims of MARGARET CROFT and ELISE CROFT must be and are hereby denied.

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.

The record discloses that GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA was organized under the laws of Delaware; and that at all pertinent times more than 50% of its claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that the claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act and that 100% of its stock was owned by these individual claimants.

CU-2213

In the absence of evidence to the contrary, the Commission finds that the business of claimant, GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA, was nationalized or otherwise taken by the Government of Cuba on December 6, 1961, pursuant to Law 989 (supra).

Evidence submitted by claimant and information furnished the Commission from sources within Cuba disclose that the GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA owned a warehouse constructed of steel and galvanized iron, with 366.08 square meters of floor space, located on a lot of 2,000 square meters in Block 6, between First and Third Avenues and 8th and Rio Martin Streets, Vista Alegre, Havana, Cuba. Additionally, the evidence of record includes a financial statement which was prepared by the former General Manager, Bradford B. Dallas, which shows the financial status of the firm in March 1961, including material which relates to the current and fixed assets of the enterprise.

The evidence of record discloses that the claimant corporation had net current assets of \$10,126.04 after deduction of certain income drawn by the stockholders; and that the fixed assets, including land, warehouse and machinery, had a total value of \$70,000.00. The evidence also discloses that depreciation of the warehouse and machinery was computed by the General Manager of the firm in the amount of \$26,181.83, leaving a net value of the fixed assets in the amount of \$43,828.17.

Claimant has asserted a claim for loss of income to the stockholders of corporate profits from 1961 to 1971. The Commission finds, however, that this portion of the claim must be denied for the reason that the property of the corporation then belonged to the Cuban Government.

Thus, based upon the entire record, including evidence available to the Commission concerning the value of similar property in Havana, Cuba, the Commission concludes that the value of the property that is most equitable to the claimant corporation, including current and fixed assets, is in the amount of \$53,954.21. The Commission has consistently refrained from deducting liabilities in the case of an American corporation operating in Cuba, except for items such as taxes which may be a proper subject of set-off. Accordingly, the Commission finds that the GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA suffered a loss on December 6, 1961, in the amount of \$53,954.21, within the meaning of Title V of the Act.

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 this case it is so ordered.

CERTIFICATIONS OF LOSS

The Commission certifies that MARGARET CROFT 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 Twenty-three Thousand Five Hundred Dollars (\$23,500.00) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement;

The Commission certifies that ELISE CROFT 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 Twenty-three Thousand Five Hundred Dollars (\$23,500.00) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement; and

CU-2213

The Commission certifies that the GENERAL CONCRETE CONSTRUCTION COMPANY OF CUBA 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 Fifty-three Thousand Nine Hundred Fifty-four Dollars and Twenty-one Cents (\$53,954.21) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement.

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

OCT 15 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jarre

Theodore Jarre, 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).)

CU-2213