

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

IN THE MATTER OF THE CLAIM OF

LONE STAR CEMENT CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2355

Decision No. CU - 6217

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$25,208,250.87 is asserted by LONE STAR CEMENT CORPORATION based upon the asserted loss of investments in Cuban enterprises.

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 it was organized under the laws of the State of Maine in 1919, that at all times pertinent hereto more than 50% of its outstanding capital stock has been owned by nationals of the United States, and that in 1967, 0.4% of the common stock and 0.1% of the preferred stock were held by nonnationals of the United States. The Commission holds that LONE STAR CEMENT CORPORATION qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for the following losses:

Cuban Portland Cement Company	\$24,721,129.04
Transportes Mariel, S.A.	79,415.43
Proyectos Industriales de Jaruco, S.A.	273,442.75
Employees Assignments of Claims	<u>134,263.87</u>
Total	\$25,208,251.09

The Commission finds on the basis of evidence of record that claimant wholly owned the two Cuban corporations, Cuban Portland Cement Company and Transportes Mariel, S.A. and that Proyectos Industriales de Jaruco, S.A. was owned by the Cuban Portland Cement Company. The Commission further finds that the three Cuban enterprises were intervened by the Government of Cuba on August 18, 1960 by Resolution 15770 of the Cuban Ministry of Labor and that claimant sustained losses thereby within the meaning of Title V of the Act.

Since Cuban Portland Cement Company, Transportes Mariel, S.A. and Proyectos Industriales de Jaruco, S.A. were organized under the laws of

Cuba, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation it has been held previously that a qualified national of the United States who is a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Cuban Portland Cement Company

This enterprise, hereinafter referred to as the Cuban Company, owned and operated a cement manufacturing plant with an annual productive capacity of two and one-half million barrels, located in Mariel, Province of Pinar del Rio, Cuba and two distribution terminals located in Havana and Nuevitas in the Province of Camaguey. Claimant asserts that it suffered a loss in the amount of \$24,721,129.04 for the intervention of this company for the following:

Current Assets	\$ 3,361,414.16
Investments	23,600.00
Prepaid and Deferred Items	63,120.42
Fixed Assets	<u>21,830,805.76</u>
	\$25,278,940.34
Less Liabilities	<u>557,811.30</u>
Net Loss	\$24,721,129.04

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 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.

In support of the claim, claimant has submitted financial statements with an itemized listing of accounts, a complete inventory of equipment, machinery and buildings with several photographs of many of these items, copies of maps, and an appraisal of the fixed assets of the Cuban Company, a description of the plots of land claimed and affidavits of persons who had personal knowledge of the properties claimed.

The land owned by the Cuban Company, with the asserted market values as of August 18, 1960, consisted of the following:

Plantsite (Portion of Cayo Mason, Tabaguera and Mojica) - 109.6 acres at \$2.00 per square meter	\$ 886,116.00
Febles and portion of Cayo Mason, Tabaguera, Mojica, Nandin and La Seda - 255.2 acres, cost	8,587.17
San Jose and Pretelin - 215.6 acres, cost	9,760.94
Munson, Barker Annex and Right of Way 6.2 acres, cost	26,887.57
Ojo del Agua - 31,416 square meters at \$2.00 per square meter	62,832.00
Atares, Havana - .89 acres at \$100.00 per square meter	361,100.00
Nuevitas, Camaguey - 1175.9 acres, cost	234,928.08
	<u>\$1,590,211.76</u>

The values asserted by claimant are the original costs or a market value "decreed" by the Government of Cuba. The decreed values concern waterfront property in Havana and improved urban lots (those provided with sewers, streets, utilities, etc.). The improved properties of the Cuban Company were not located in strictly urban areas and the value applied was one-half the decreed value.

The buildings, machinery and equipment are listed in claimant's Exhibit B-2 which indicates the date of purchase, cost, replacement cost in August, 1960, condition of the item and asserted market value for August, 1960. The appraisal was prepared, prior to the taking of the company, by the Cuban Company's Vice-President and General Superintendent. The amount claimed represents the asserted market value of \$20,240,594.00. Claimant has listed the amounts spent for the repair and maintenance of the plant and equipment for the last ten years, the total exceeding \$5,600,000.00. However, included in the appraisal on page 24 of Exhibit B-2, Schedule H are items for Engineering Power Studies, Engineering & Test Boring and New York Engineering L.S.C.C. having a total 1960 value of \$192,700.00. These items appear to be expenses and should have been written off by 1960. A letter to claimant requesting an explanation of the three items on August 11, 1970 remains unanswered.

The buildings, machinery and equipment with their 1960 values are set forth in the appraisal for the following locations:

Quarry, Crushing and Rock Storage	\$ 1,939,896.00
Raw Mill and Slurry Storage	1,415,440.00
Burning and Cooling	2,769,425.00
Clinker and Gypsum Storage	140,700.00
Finish Grinding	1,521,070.00
Packing and Storing Cement	1,162,250.00
Wharves and Docks	439,000.00
Fuel Storage and Handling	336,125.00
Shops and Storeroom	349,750.00
Substation	309,400.00
Main Power Distribution	430,000.00
Power Production	2,375,858.00
Laboratory	127,000.00
Mill Office	147,250.00
Service Buildings	170,400.00
Water Works and Water Distribution	598,200.00
Yards	605,500.00
Marine Department	771,520.00
Atares Warehouse	1,136,440.00
Nuevitas Warehouse	1,375,270.00
Townsite Cayo Mason	648,500.00
Townsite Mojica	196,000.00
Office Habana	55,600.00
Waste Heat	1,220,000.00
	<hr/>
Total	\$20,240,594.00

In support of the claim for the remaining assets of the Cuban Company claimant has submitted financial statements, a copy of the Daily Cash Report, dated August 17, 1960, as well as inventories of supplies and materials. The last complete financial statement prior to the intervention of the Cuban Company was dated July 31, 1960. The current assets, current liabilities and other assets other than fixed assets as of August 18, 1960 (after adjustment for cash and inventory changes for the period between July 31, 1960 and August 18, 1960) were:

Current Assets

Cash on Hand and in Banks	\$ 552,733.00
Notes Receivable	196,686.18
Accounts Receivable	1,291,839.45
Inventories	1,320,155.53
Total Current Assets	<hr/> \$3,361,414.16
Investments	23,600.00
Prepaid and Deferred Items	<hr/> 63,120.42
Total Assets Other than Fixed Assets	\$3,448,134.58

Current Liabilities

Accounts Payable	\$ 261,196.43
Accrued Payroll	10,987.08
Accrued Cuban Taxes	285,627.79
Total Current Liabilities	<u>\$ 557,811.30</u>
Value of Other Assets Less Liabilities	\$2,890,323.28

On the basis of all the evidence of record, the Commission finds that the net worth of the Cuban Portland Cement Company on August 18, 1960, was \$24,528,429.04, after deducting the engineering costs of \$192,700.00. The Commission concludes that by reason of its ownership of the Cuban Company, claimant suffered a loss in the amount of \$24,528,429.04 when it was intervened by the Government of Cuba on August 18, 1960, within the meaning of Title V of the Act.

Transportes Mariel, S.A.

This Cuban company, hereinafter referred to as Transportes, was engaged in the transporting of the finished bulk cement by water from the Cuban Company's plant to the distribution terminals in Havana and Nuevitas, leasing the marine equipment from the Cuban Company. Ownership of 232.14 acres of land known as "La Cantera", the quarry, was in the name of Transportes. For the loss of this company which was intervened on August 18, 1960, claimant asserts the amount of \$79,415.43 for the following:

Cash in Bank	\$63,585.00
Furniture and Equipment	293.50
"La Cantera", 232.14 acres, cost	<u>15,536.93</u>
Total	\$79,415.43

In support of the claimed amounts, claimant has submitted a copy of the Daily Cash Report for August 17, 1960 showing the amount of \$63,585.00 on deposit in the First National City Bank Office in Havana, a description of the land owned, an aerial photo showing the location of the quarry with reference to the cement plant of the Cuban Company and affidavits of company officers concerning the ownership and value of the properties. It is stated that Transportes had no liabilities and its only assets were those listed above.

The Commission finds that the amounts claimed for these assets of Transportes are fair and reasonable and concludes that claimant suffered a loss in the amount of \$79,415.43 as a result of the intervention of this company by the Government of Cuba on August 18, 1960, within the meaning of Title V of the Act.

Proyectos Industriales de Jaruco, S.A.

This Cuban enterprise was a wholly owned subsidiary of the Cuban Portland Cement Company and its purpose was to own real property for the use of its parent. Its value is asserted to have been \$273,442.75 on August 18, 1960, the date of its intervention for

731 acres of land at Jaruco, Province of Havana, cost	\$176,700.00
126 acres of land at Gibara, Province of Oriente, cost	10,000.00
Exploration and Development Costs at Jaruco	<u>86,742.75</u>
Total	\$273,442.75

It has been asserted that this company had no other assets and no liabilities although a debt of about \$85,000.00 to its parent company was mentioned in a letter from its Cuban attorney. However this sum is not treated as an asset of the parent nor a liability of Proyectos. It has been noted that the amount of \$86,742.75 had previously been listed in Exhibit E to the July 31, 1960 Balance Sheet of the Cuban Company as a Deferred Item but in filing this claim the amount was omitted from the Cuban Company's assets and credited to Proyectos.

The record for this company includes a copy of a letter dated August 18, 1960 from its treasurer to claimant's officers stating the book value of its land (the same amount claimed herein) and the exploration and development costs which had been advanced by the Cuban Company (the costs therein being the amount of \$84,264.80 as set forth in the balance sheet for December 31, 1959). The record also contains a description of the land parcels purchased by Proyectos in 1956 and 1957 and two maps, one showing the clay samples on the various properties in the Jaruco area obtained as a result of the explorations.

The Commission finds that the net worth of Proyectos, on the basis of the entire record, was \$273,442.75 on August 18, 1960 and concludes that claimant suffered a loss in that amount as a result of the intervention of that company by the Government of Cuba, within the meaning of Title V of the Act.

Recapitulation

The Commission concludes that claimant suffered the following losses on August 18, 1960 by the intervention of its Cuban subsidiaries:

Cuban Portland Cement Company	\$24,528,429.04
Transportes Mariel, S.A.	79,415.43
Proyectos Industriales de Jaruco, S.A.	<u>273,442.75</u>
Total Loss	\$24,881,287.22

Claim has also been asserted for the amount of \$134,263.87 representing losses of employees, the claims for which had been assigned to claimant. Claimant has submitted assignments of their claims by five employees and evidence of the amounts paid the employees. However evidence of the United States nationality of these employees had not been submitted as requested in the Commission's letter of August 11, 1970. Accordingly this portion of the claim must be and is hereby denied.

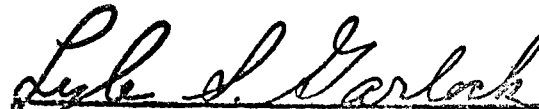
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

CERTIFICATION OF LOSS

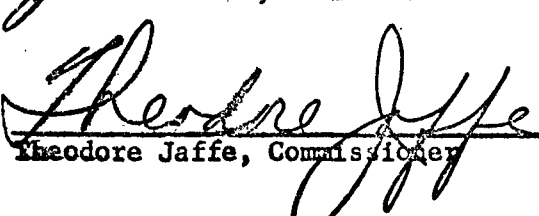
The Commission certifies that LONE STAR CEMENT CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Four Million Eight Hundred Eighty-One Thousand Two Hundred Eighty-Seven Dollars and Twenty-Two Cents (\$24,881,287.22) with interest thereon at 6% per annum from August 18, 1960 to the date of settlement.

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

JUN 8 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. 531.5(e) and (g), as amended (1970).)

CU-2355