

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

IN THE MATTER OF THE CLAIM OF

GENERAL DYNAMICS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU** -2476

Decision No. **CU** -3787

Counsel for claimant:

Gus J. Bennett, Esq.

Appeal and objections from a Proposed Decision entered on July 30, 1969.
No oral hearing requested, hearing on the record.

Hearing on the record held on August 19, 1969

FINAL DECISION

Under date of July 30, 1969, the Commission issued its Proposed Decision, certifying a loss in favor of claimant in the amount of \$597,169.00, plus interest, for the loss of claimant's 100% stock interest in its Cuban subsidiary, nationalized by Cuba on October 24, 1960. A portion of the claim for good will in the amount of \$550,000.00 was denied for failure to sustain the burden of proof.

Subsequently, claimant objected and submitted supporting evidence, in the form of financial statements for its Cuban subsidiary covering the years ending September 30, 1956 through September 30, 1959. Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that a Final Decision be entered as follows:

The Commission now finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings of the Cuban subsidiary at 10% to arrive at the going concern value of the Cuban subsidiary. The evidence establishes that such earnings after Cuban taxes for the years ending September 30, 1956 through September 30, 1959 were \$55,262.51, \$98,828.49, \$117,998.24, and \$142,267.33, respectively. Accordingly, the Commission concludes that the average net annual earnings after Cuban taxes of the Cuban subsidiary on October 24, 1960, the date of loss, were \$103,589.14, and finds that the value of claimant's 100% stock interest in the Cuban subsidiary on the date of loss was \$1,035,891.40.

The Commission finds no basis for allowing good will in the amount of \$550,000.00, or in any other amount.

It is further

ORDERED that the certification of loss, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that GENERAL DYNAMICS 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 Thirty-five Thousand Eight Hundred Ninety-one Dollars and Forty Cents (\$1,035,891.40) with interest at 6% per annum from October 24, 1960, to the date of settlement.

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

AUG 27 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,777,559.00, was presented by GENERAL DYNAMICS CORPORATION based upon the nationalization of its subsidiary 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.

The record shows that claimant was organized under the laws of Delaware, and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An official of claimant has certified that as of August 14, 1967, its transfer agent has advised that 2% of claimant's outstanding capital stock was owned by non-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.

On the basis of the evidence of record, including stock certificates, statements from officials of claimant reflecting information obtained from claimant's books and records, as well as a certificate indicating the merger of The Liquid Carbonic Corporation into claimant as of September 13, 1957, the Commission finds that claimant owned a 100% stock interest in Compania de Carbonico Liquido de Cuba, S.A., hereafter called the subsidiary. The record shows that the subsidiary maintained a plant in Havana, Cuba for the production of carbon dioxide in the form of gases, liquids and solids (dry ice).

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Liquid Carbonic Corporation of Cuba. The Commission finds that the subsidiary was nationalized on October 24, 1960.

The record shows that the subsidiary was organized under the laws of Cuba and therefore does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State,

the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that 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.)

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 computed its losses in Cuba on the basis of an affidavit, dated April 5, 1967, from Mr. E. Quintero, an engineer presently employed by claimant and formerly associated with claimant's subsidiary in Cuba. Therein Mr. Quintero stated that his experience and knowledge of the subsidiary's assets in Cuba together with certain documents in evidence led him to the opinion that on the date of loss those assets had the following values:

Real Estate:	
Land	\$ 55,053.00
Buildings	100,000.00
Construction in Progress	6,155.00
Automobiles, Machinery and Equipment (including spare parts)	574,000.00
Furniture and Fixtures	25,000.00
Cash	185,380.00
Notes and Accounts Receivable	141,530.00
Inventories	132,397.00
Prepaid Expenses	8,044.00
Good Will	<u>550,000.00</u>
Total	<u>\$1,777,559.00</u>

The evidence includes copies of an audited balance sheet and profit and loss statement for the subsidiary as of December 31, 1959, as well as copies of interim balance sheets for the subsidiary as of July 31, 1960 and August 31, 1960, respectively. According to a statement from an official of claimant to the Department of State, dated December 2, 1960, the latter balance sheet was the last financial statement received from the subsidiary; and the Commission utilizes that statement, in part, as the basis for its decision herein because it is equitable to the claimant and supported by the record.

The interim balance sheet of August 31, 1960 shows the following:

A S S E T S

<u>Current Assets</u>	
Cash	\$185,380
Notes and Accounts Receivable	
Notes Receivable	1,379
Trade Receivables	135,366
Miscellaneous Receivables	10,451
Less Allowance for Doubtful Accounts	<u>5,666</u>
Net Receivables	141,530
Inventories	
Finished Goods	80,099
Materials, Parts & Supplies	62,318
Less Allowance for Inv. Shortage	<u>10,020</u>
Inventories Net	132,397
Prepaid Expenses	<u>8,044</u>
Total Current Assets	\$467,351
<u>Investments</u>	3,201
<u>Fixed Assets</u>	
Land and Improvements	21,029
Buildings & Improvements	91,295
Machinery and Equipment	548,810
Construction in Process	<u>6,155</u>
Total Fixed Assets	667,289
Less Accumulated Depreciation	<u>381,986</u>
Fixed Assets - Net	<u>285,303</u>
TOTAL ASSETS	\$755,855

L I A B I L I T I E S

<u>Current Liabilities</u>	
Accounts Payable	\$ 28,410
Accrued Expenses	24,050
Customers' Deposits & Credit Balances	9,598
Miscellaneous Taxes Payable	6,889
Legal Social Obligations	13,194
Dividends Payable	65,198
Provision for Income Taxes	<u>45,371</u>
Total Current Liabilities	\$192,710
<u>Reserve for Contingencies</u>	7,794
<u>Net Worth</u>	
Capital Stock	409,500
Surplus	
Capital Surplus	31,482
Earned Surplus	<u>114,369</u>
TOTAL LIABILITIES	\$755,855

An examination of the evidence of record indicated that certain elements of the claim required some clarification. Those matters were brought to the attention of claimant and appropriate explanations were requested. The Commission also suggested the submission of information concerning the age and condition of the buildings which Mr. Quintero had appraised at \$100,000.00 and an explanation as to why the land cost is shown as \$21,029.00 when \$55,053.00 is claimed for this same item. Claimant's response under date of July 21, 1969 was that further information concerning the age and condition of the buildings was not available, and that it relies on Mr. Quintero's appraisal.

As to the buildings there is insufficient evidence in the record to indicate that a value other than that shown in the balance sheet would be proper. The land, however, is a different matter. As to it, the cost almost thirty years earlier was \$21,029.00. The evidence, including a current photograph, shows its high commercial use when nationalized and it assuredly had increased in value, like other comparable Havana land, since 1929. The Commission finds that the value of \$55,053.00 placed on this land by Mr. Quintero is fair and reasonable and hereby adopts it.

Mr. Quintero's appraisal also included "good will" which likewise was the subject of further inquiry by the Commission. Claimant's response was that the amount set forth for good will, i.e. \$550,000.00, was justified on the basis of Mr. Quintero's appraisal and that "when a going business is expropriated the business is worth more than the sum of its depreciated parts." With respect to this issue, Mr. Quintero stated: "The valuation of \$1,777,559 is confirmed by applying a standard and conservative test of 10 to 15 times annual net profits after taxes, which net profit was, for the year ended September 30, 1959, \$142,267.33 . . . This would give a value to the stock of between \$2,134,055 and \$1,426,733." The Commission has had occasion

to consider similar contentions in claims under Title V of the Act, and might find it reasonable to include an amount for good will, or to determine the going concern value of an enterprise as a multiple of net earnings, if such net earnings were demonstrated over a period of years, and if other factors did not militate against such a method. (See Claim of Julius J. Shepard, FCSC Claim No. CU-0407.) In the instant case, with only one year's earnings furnished such a method cannot, however, be applied.

The Commission, therefore, concludes that the valuation most appropriate to the property and equitable to the claimant on the basis of the present record is that shown in the subsidiary's balance sheet as of August 31, 1960 with the land, however, valued at \$55,053.00 instead of \$21,029.00. Accordingly, the Commission finds that the excess of the subsidiary's assets over its liabilities on October 24, 1960, the date of loss, was \$597,169.00.

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 GENERAL DYNAMICS 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 Five Hundred Ninety-seven Thousand One Hundred Sixty-nine Dollars (\$597,169.00) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

JUL 30 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).)