

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

IN THE MATTER OF THE CLAIM OF

ENGLEHARD MINERALS &  
CHEMICALS CORPORATION

Claim No. CU -2781

Decision No. CU -6115

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Bernard Bernstein, Esq.

Appeal and objections from a Proposed Decision entered on March 17, 1971.  
No hearing requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

Under date of March 17, 1971, the Commission issued its Proposed Decision denying this claim in its entirety for lack of proof. Subsequently, claimant objected and submitted evidence in support of its objections.

Upon consideration of claimant's objections and the supporting evidence in light of the entire record, the Commission finds no valid basis for altering or otherwise modifying the decision previously entered. The record fails to establish the percentage of the original claimant's outstanding capital stock that was owned by nationals of the United States. The evidence fails to establish that Cia. Minera Buenavista, S.A. (Buenavista), a Cuban corporation, had sufficient assets to pay asserted debts aggregating \$130,000.00 on September 13, 1961, when it was nationalized by Cuba. The evidence fails to establish that the asserted stock interest in Buenavista had any value on the date of loss. The evidence also fails to


establish that the asserted 100% stock interest in Philipp Brothers (Cuba), S.A., a Cuban corporation, had any value on the asserted date of loss.

Accordingly, the Proposed Decision of March 17, 1971 is affirmed in all respects.

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

SEP 8 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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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 \$172,246.05, was presented by ENGLEHARD MINERALS & CHEMICALS CORPORATION based upon the asserted loss of certain personal property 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 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.

Inasmuch as claimant is a corporation, it is subject to Section 502(1)(B) of the Act which 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 claim was filed originally by Minerals & Chemicals Philipp Corporation, organized under the laws of Maryland. The record shows that as of September 27, 1967 the original claimant merged with Englehard Industries, Inc., a Delaware corporation, to form ENGLEHARD MINERALS & CHEMICALS CORPORATION (ENGLEHARD) under the laws of Delaware. Claimant states that it is a national of the United States.

The following losses are asserted:

1. Debt owed by Cia. Minera Buenavista, S.A. (Buenavista), a Cuban corporation, to original claimant \$100,000.00
2. Debt owed by Buenavista to Philipp Brothers A.G., Zug (Zug), a Swiss corporation 30,000.00
3. 100 shares of common stock of Buenavista owned by Zug 10,000.00
4. Bank account owned by Philipp Brothers Ore Corporation (Ore) 355.61

5. Bank account owned by Philipp Brothers (Cuba), S.A., a Cuban corporation	2,890.44
6. Debt owed by Cia. Minera Palcauto, S.A. (Palcauto), a Cuban corporation, to Ore	<u>29,000.00</u>
Total	<u>\$172,246.05</u>

In a certificate of April 27, 1967, an officer of the original claimant stated that on July 20, 1960 Philipp Brothers, Inc. (Inc.) and Ore were merged into the original claimant; that on the same date all of Inc.'s outstanding capital stock was owned by United States nationals; that on the same date Inc. owned 60.43% of the outstanding capital stock of Philipp Brothers Metal Corporation (Metal), and that United States nationals owned over 80% of the remaining 39.57%; that on the same date Inc. owned 100% of the outstanding capital stock of Metal; that on the same date Metal owned 97% of the outstanding capital stock of Zug "and now owns 100% of that corporation directly or indirectly"; and that Ore owned all of the outstanding capital stock of Philipp Brothers (Cuba), S.A. (the Cuban corporation), which was acquired by the original claimant by the merger of July 20, 1960.

In another certificate of November 30, 1967, the same officer who is also an officer of the claimant, ENGLEHARD, stated that on July 20, 1960 over 90% of Ore's outstanding capital stock was owned by United States nationals; and that by virtue of the mergers of 1960 and 1967 ENGLEHARD acquired sole ownership of the Cuban corporation. That certificate was accompanied by certain evidence in support of the asserted losses.

The record includes the following evidence:

a) A copy of a note of October 26, 1960 in the amount of \$100,000.00 drawn by Buenavista in favor of the original claimant.

b) A copy of a stock certificate for 1,000 shares of preferred stock of Buenavista endorsed in blank, stated to be security for the loan of \$100,000.00.

c) A copy of an excerpt from Cuba's Official Gazette of September 13, 1961, in which Buenavista is listed as nationalized.

d) A copy of a note of October 26, 1960 in the amount of \$30,000.00 drawn by Buenavista in favor of Zug.

e) A copy of a stock certificate for 100 shares of common stock of Buenavista issued on March 26, 1958 in the name of Zug.

f) Copies of two stock certificates for 5,000 shares of stock of the Cuban corporation issued to Ore.

g) A copy of a statement from the Trust Company of Cuba showing that as of January 29, 1960, Ore had a credit balance of \$355.61, the Cuban peso being on a par with the United States dollar.

h) A copy of a statement from the same bank showing that as of June 13, 1960, the Cuban corporation had a credit balance of \$2,184.06.

i) Copies of two notes dated July 7, 1959 in the aggregate amount of \$29,000.00 drawn by Palcauto in favor of Ore, and accompanying protest papers.

The evidence of record did not indicate where Inc., Ore and Metal were organized. Moreover, the said officer of claimant made conflicting statements insofar as ownership of Metal's capital stock was concerned. His statement of April 27, 1967 recites that on July 20, 1960 Inc. owned 60.43% of Metal's outstanding capital stock, and at another point he states that Inc. owned all of Metal's capital stock "at that time". Further, that officer stated that Metal owned 97% of Zug's outstanding capital stock on July 20, 1960, and "now owns 100% of the corporation directly or indirectly." On two occasions the Commission suggested that claimant submit appropriate material to clarify its claim in these respects. However, no response has been received to date.

As noted above, it is asserted that Ore, which had merged into the original claimant on July 20, 1960, owned all of the outstanding capital stock of the Cuban corporation. Yet claim is being made only for a small bank account of the Cuban corporation. The Commission therefore suggested

on two occasions that claimant clarify why no claim was being made for the net worth or value of the Cuban corporation.

With respect to Buenavista, the Commission suggested the submission of its balance sheet and any other financial statement closest to September 13, 1961, the date Buenavista was nationalized by Cuba. With respect to Palcauto, the Commission suggested the submission of information concerning the date it was taken by Cuba and evidence respecting its financial condition at that time. Here again, no such evidence has been filed.

The Regulations of the Commission provide:

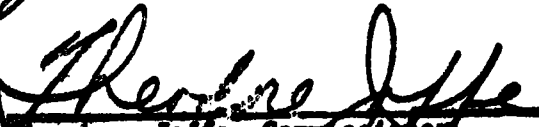
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof. The evidence of record does not establish that claimant succeeded to or sustained a loss of property within the meaning of Title V of the Act, and that its claim was owned by a national of the United States on the date or dates of loss and continuously thereafter until the date of filing with the Commission. Accordingly, this claim is denied in its entirety. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

**MAR 17 1971**

  
Lyle S. Calllock, Chairman

  
Theodore Jaffe, Commissioner

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).)