

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

IN THE MATTER OF THE CLAIM OF

FRED MCKENZIE

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU-2987

Decision No. CU-0665

Counsel for claimant:

Condor, Youngman, Gibson & Gault
By John C. Youngman, Jr., Esq.

AMENDED FINAL DECISION

Under date of November 15, 1967, this claim was denied for lack of proof. Thereafter, a Final Decision in denial of the claim was entered on October 8, 1969. An oral hearing was requested by claimant, through counsel, and on March 11, 1971, such oral hearing was held at which time the claimant submitted additional evidence, including testimony and documentation in support of the claim.

Upon consideration of claimant's objections and the supporting evidence, in light of the entire record, the Commission now finds that claimant owned 375 shares of stock or all outstanding shares of a Cuban corporation known as McKenzie Construction Company, S.A. This corporation was doing business in Cuba in activities such as the mining of sand, construction work and pipe-lines; and that on or about January 1, 1960, the Government of Cuba forced claimant to leave Cuba and the assets of the corporation were taken at that time.

The aforesaid corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act. In this type of situation, it has been held that an American stockholder is entitled to file claim based

upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) Therefore, claimant, a national of the United States since birth, is entitled to file this claim for the interest owned in the Cuban enterprise.

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

According to the evidence of record, the corporation owned and operated a sand mill at or near Cienfuegos, Cuba, pursuant to a long term lease, and such mill included a sand plant, heavy equipment, access roads, railroad sidings and real property, such as buildings for offices, living quarters, warehouses, along with household furnishings and appliances. Further, the corporation was engaged in construction work for the Cayo Frances Project, a governmental activity, and had laid pipe lines for some of the major oil companies in Cuba.

In reaching the value of the corporate property in question, the Commission has carefully considered all evidence of record, including the testimony of claimant, affidavits of former employees, certified lists of equipment sold to claimant by the manufacturers, photographs and a balance sheet prepared at the time of loss for the McKenzie Construction Company, S.A., which was dated December 31, 1959.

The Commission finds that the balance sheet, as supported by the entire record, is the most appropriate to the property and equitable to the claimant; that this balance sheet shows total assets of \$1,349,860.00 and liabilities of \$46,037.00, or a net worth of \$1,303,523.00; and that claimant, as the sole stockholder, suffered a loss in that amount within the meaning of Title V of the Act.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant, or the sum of \$949,326.30. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

Accordingly, the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that FRED McKENZIE 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 Three Hundred Three Thousand Five Hundred Twenty-Three Dollars (\$1,303,523.00) with interest thereon at 6% per annum from January 1, 1960 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 or 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.

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

IN THE MATTER OF THE CLAIM OF

FRED McKENZIE

Claim No. CU-2987

Decision No. CU-665

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

John C. Youngman, Jr., Esq.

Appeal and objections from a Proposed Decision entered on November 15, 1967; Oral Hearing scheduled but continued; Hearing on the record.

Hearing on the record held on September 24, 1969

FINAL DECISION

The Commission issued its Proposed Decision in this claim on November 15, 1967, denying the claim for the reason that claimant failed to establish ownership of rights and interests in property which was nationalized or otherwise taken by the Government of Cuba. Thereafter, claimant objected to the Proposed Decision and submitted a list of personal property but has failed to submit supporting information or evidence relating to ownership, loss and value of the property, subject of the claim.

An Oral Hearing was scheduled on March 21, 1968, but was continued by counsel. No further request was made by claimant or counsel for an Oral Hearing. Thereafter, the Commission forwarded several letters to claimant, through counsel, wherein suggestions were made toward establishing this claim. No response to these letters has been received by the Commission and no supporting evidence has been submitted by the claimant.

Full consideration having been given to the objections of the claimant, and the entire record, including claimant's objections having been reviewed, and general notice of the Proposed Decision having been given by posting for 30 days, it is

ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision of the Commission in this claim.

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

OCT 8 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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

IN THE MATTER OF THE CLAIM OF

FRED MCKENZIE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2987

Decision No. CU-665

Counsel for claimant:

Condor, Youngman, Gibson and Gault
By: John C. Youngman, Jr., Esq.

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 \$949,326.20, was presented by FRED MCKENZIE and is based upon the asserted loss of real and personal property, including the assets of the McKenzie Construction Company, S.A., located in Cuba. Claimant has been a national of the United States since his birth in the United States.

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.

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) (Supp. 1967).)

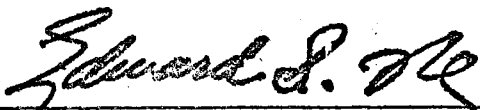
Claim was asserted herein for the loss of certain real and personal property, located in Cuba, including the assets of the McKenzie Construction Company, S.A. By Commission letter of June 20, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. In letter of July 19, 1967, counsel requested an extension of time to submit supporting evidence; and in Commission letter of July 21, 1967, the time to submit such supporting data was extended for 45 days.

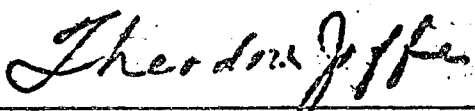
In Commission letter of September 7, 1967, counsel and claimant were invited to submit any evidence available to them within 45 days from that date, and they were informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has been submitted. However, by letter of September 7, 1967, counsel requested additional time to submit the supporting information and evidence. Accordingly, in Commission letter of September 12, 1967, the Commission affirmed the extension of time for 45 days. However, no response has been made to the correspondence of the Commission.

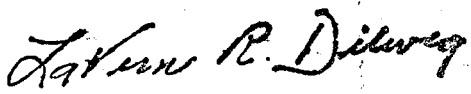
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. 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

NOV 15 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, 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, 32 Fed. Reg. 412-13 (1967).)

CU-2987