

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

IN THE MATTER OF THE CLAIM OF

GENERAL AMERICAN  
TRANSPORTATION CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3477

Decision No. CU  
3938

Counsel for claimant:

Roger L. Severns, Jr., Esq.

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 \$43,938.56 plus interest, was presented by GENERAL AMERICAN TRANSPORTATION CORPORATION based upon the asserted loss of three tank cars in Cuba and loss of rental income therefrom.

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, which was known as General American Tank Car Corporation until March 23, 1966, was organized under the laws of New York and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that as of October 25, 1967, 99.9974% of claimant's outstanding capital stock was owned by 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.

The evidence establishes and the Commission finds that claimant owned three tank cars with tank linings, designated as GATX-67544, GATX-28900, and GATX-33319, the first one of which it had leased to El Gas Popular de Cuba, S.A., and the other two having been leased to Electro Quimica del Caribe, S.A. It appears from the evidence of record and other information available to the Commission that both of the lessees were Cuban corporations.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized El Gas Popular de Cuba, S.A., hereafter referred to as Gas. On October 13, 1960, the Cuban Government published Law 890, which listed as nationalized Electro Quimica del Caribe, S.A., hereafter referred to as Electro. The Commission finds that claimant's three tank cars which were in the possession of Gas and

Electro, were taken by the Government of Cuba on those respective dates, and concludes that claimant thereby sustained losses within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Car No. GATX-67544 and lining	\$8,971.77	
Car No. GATX-28900 and lining	2,895.01	
Car No. GATX-33319 and lining	<u>3,999.28</u>	\$15,866.06
Service Charges:		
GATX-67544, March 1, 1960 to expiration of contract, January 31, 1961, at \$117.50 per month (11 months)	1,292.50	
GATX-67544, February 1, 1961 to May 31, 1967, at \$117.50 per month (76 months) for use of car after contract	8,930.00	
GATX-28900, May 1, 1960 to expiration of contract, July 31, 1961, at \$110.00 per month (15 months)	1,650.00	
GATX-28900, August 1, 1961 to May 31, 1967, at \$110.00 per month (70 months) for use of car after contract	7,700.00	
GATX-33319, May 1, 1960 to expiration of contract, February 28, 1961, at \$100.00 per month (10 months)	1,000.00	
GATX-33319, March 1, 1961 to May 31, 1967, at \$100.00 per month (75 months) for use of car after contract	<u>7,500.00</u>	<u>28,072.50</u>
Total		<u>\$43,938.56</u>

Claimant also asserts a claim for an undetermined amount for use of the cars subsequent to May 31, 1967 at the combined rate of \$327.50 per month, and for interest at a reasonable rate, to be computed in a reasonable manner.

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

#### Tank Cars and Tank Car Linings

The record includes copies of the contracts pursuant to which the three tank cars and linings were leased to the Cuban corporations, and statements of claimant, setting forth the details involved in its computation of the claim. Claimant cites certain rules adopted by the Association of American Railroads which indicate the standard method for determining the values of tank cars and tank car linings, taking into account appropriate depreciation.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the result obtained by applying the standard method of the Association of American Railroads. Accordingly, the Commission finds that the aggregate value of the tank car leased to Gas, No. GATX-67544, and its lining on October 24, 1960, the date of loss, was \$8,971.77. The Commission further finds that the aggregate value of the two tank cars leased to Electro, Nos. GATX-28900 and GATX-33319, and their linings on October 13, 1960, the date of loss, was \$6,894.29.

#### Rental Income

The record shows that Contract No. 2740, entered into between claimant and Gas on January 22, 1960, provided for a monthly rental of \$117.50 for tank car No. GATX-67544, payable in advance on the first day of each month, beginning February 1, 1960, until termination on January 31, 1961. It further appears that claimant received only one payment of \$117.50, the one due on February 1, 1960, and that subsequent payments by the lessee were made promptly by deposits in local Cuban banks for transmittal to claimant. The Cuban authorities, however, failed to grant permission for such transmittal, and claimant never received any further payments from Gas on account of Contract No. 2740.

Pursuant to Contract No. 2893, as amended, tank car No. GATX-28900 was leased to Electro for the period ending July 31, 1961, at the monthly rate of \$110.00, payable in advance on the first day of each month. The last payment received by claimant was the one due April 1, 1960. As in the case of Contract No. 2740, later payments were made promptly to local Cuban banks, but Cuban authorities failed to permit transmittal of the funds to claimant. Contract No. 2905 pertained to tank car No. GATX-33319, and was entered into on February 20, 1960 for the period ending February 28, 1961. The monthly rental was \$100.00 per month, payable in advance on the first of each month beginning March 1, 1960. The last payment received by claimant was the one due on April 1, 1960, and other circumstances relating to the lessee's subsequent payments to local Cuban banks and the failure of the Cuban authorities to permit transmittal to claimant were identical to those concerning the other contract with Electro.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission further finds that the losses occurred

on the days after payments were made to the local banks, namely, on the second day of each month with respect to all three contracts for the period of time ending October 31, 1960; and that further losses of rental income for the period November 1, 1960 to January 31, 1961 in the case of Gas, and for the period November 1, 1960 to July 31, 1961 and February 28, 1961, respectively, in the case of Electro, occurred on the respective dates of nationalization of Gas and Electro. (See Claim of John El Koury, Claim No. CU-0384.) The Commission concludes that claimant sustained the following losses with respect to the said three contracts:

<u>Lessee</u>	<u>Length of Time</u>	<u>Monthly Rate</u>	<u>Amount</u>
Gas	March 1, 1960 to January 31, 1961 (11 months)	\$117.50	\$1,292.50
Electro	May 1, 1960 to July 31, 1961 (15 months)	110.00	1,650.00
Electro	May 1, 1960 to February 28, 1961 (10 months)	100.00	<u>1,000.00</u>
	Total		<u>\$3,942.50</u>

Claim has also been made for losses of rental income for periods of time subsequent to the contract expiration dates until the date of filing, May 31, 1967, and for further extended and indefinite periods of time at the same monthly rates. This portion of the claim involves periods of time ad infinitum, which could hardly have been contemplated by the Congress as the basis for a valid claim under Title V of the Act. Moreover, the Commission has held consistently in its determinations under other titles of the International Claims Settlement Act of 1949, as amended, which also provided for claims for the nationalization or other taking of property, that upon the nationalization of property by a particular country, title to the property and all income derived therefrom subsequent to nationalization belonged to that country and not the former owner of the property. (See FCSC Dec. & Ann. 50, 111, 224, 231, 491 (1968).)

The Commission holds that the same rationale applies in this case. When the Government of Cuba nationalized Gas and Electro, it interfered with

existing valid contracts to which claimant was a party and prevented the lessees from performing in accordance with the terms of those contracts. For these reasons, claimant is being allowed all losses of income for the periods of time covered by the contracts. It is noted in this connection, that the contracts did not provide for automatic renewals, but required further written contracts to continue the same arrangements, as in the case of Contract No. 2893, which commenced on July 31, 1958 and was amended to cover the following years ending July 31, 1959, July 31, 1960, and finally ending July 31, 1961. The claim for asserted losses during subsequent periods, however, is subject to the foregoing precedent of the Commission. Accordingly, the portion of the claim for losses of income beyond the expiration dates of the contracts is denied.

With respect to the claim for interest, 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 as follows:

<u>FROM</u>	<u>ON</u>
March 2, 1960	\$ 117.50
April 2, 1960	117.50
May 2, 1960	327.50
June 2, 1960	327.50
July 2, 1960	327.50
August 2, 1960	327.50
September 2, 1960	327.50
October 2, 1960	327.50
October 13, 1960	6,894.29
October 24, 1960	8,971.77
November 1, 1960	327.50
December 1, 1960	327.50
January 2, 1961	327.50
February 2, 1961	210.00
March 2, 1961	110.00
April 2, 1961	110.00
May 2, 1961	110.00
June 2, 1961	110.00
July 2, 1961	<u>110.00</u>
Total	\$19,808.56

CERTIFICATION OF LOSS

The Commission certifies that GENERAL AMERICAN TRANSPORTATION 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 Nineteen Thousand Eight Hundred Eight Dollars and Fifty-six Cents (\$19,808.56) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 1 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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).)