

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

IN THE MATTER OF THE CLAIM OF

NORGULF TERMINALS, INC.

Claim No. CU -3670

Decision No. CU -3995

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

George M. Skelly, Jr. Esq.

AMENDED PROPOSED DECISION

The commission issued a Proposed Decision in this matter on October 8, 1969, certifying claimant's loss in the amount of \$846,198.61 for the loss of an ownership interest in a maritime terminal in Havana, Cuba. The value of the property lost was determined to have been \$1,985,014.97 on June 26, 1961, the date of loss, and a deduction of \$1,138,816.36 for a debt secured by a mortgage on the terminal property was made.

Additional evidence having been submitted, the record now shows that the total due on the mortgage for principal and interest as of June 26, 1961 was \$1,205,667.73. Accordingly, the Commission concludes that claimant sustained a loss in the amount of \$779,383.24, within the meaning of the Act.

The certification of loss, as restated below, will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that NORGULF TERMINALS, INC. suffered a loss as a result of the actions of the Government of Cuba, with in the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Hundred Seventy-Nine Thousand Three Hundred Eighty-Three Dollars and Twenty-Four Cents (\$779,383.24) with interest thereon at 6% per annum from June 26, 1961 to the date of settlement.

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

7 JAN 1970

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).)

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Counsel for claimant:

George M. Skelly, 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 \$1,985,014.97 was presented by NORGULF TERMINALS, INC., based upon the asserted loss of real and personal property in Havana, 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 NORGULF TERMINALS, INC., was organized under the laws of the State of Delaware and that at all times pertinent hereto all of its outstanding capital stock has been owned by United Fruit Company which was organized under the laws of the State of New Jersey. An authorized officer of the parent company has certified that more than 50% of the parent company's outstanding capital stock was owned by United States nationals at the pertinent times and that 98.2% of its outstanding capital stock was owned by United States nationals on February 27, 1968. The Commission holds that the United Fruit Company and claimant are nationals within the meaning of Section 502(1)(B) of the Act.

Claimant asserts a loss in the amount of \$1,985,014.97 for a maritime terminal in Havana, Cuba. The evidence establishes that claimant purchased an Administrative Concession for the construction and operation of warehouses and piers in the Port of Havana and the warehouses, piers and railroad siding on Desamparados Street in Havana, from the United Fruit Company on January 28, 1955 for the sum of \$1,900,000.00 of which \$500,000.00 was paid down and the balance to be paid in annual installments of \$100,000.00 with interest at the rate of 4% per annum on the unpaid principal. A mortgage securing the unpaid balance was given to the United Fruit Company.

On June 26, 1961, a resolution was passed by the Planning Board pursuant to Law 890 of October 13, 1960 which nationalized the property of NORGULF TERMINALS, INC. The Commission therefore finds that the maritime property belonging to claimant in Havana, Cuba was nationalized by the Government of Cuba on June 26, 1961.

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.

The valuations asserted by claimant are the book values estimated for June, 1961 as follows:

Land	\$ 482,663.50
Buildings	1,339,816.06
Movable Equipment	23,505.22
Fixed Equipment	110,252.12
Furniture & Fixtures	23,108.82
Stevedoring Equipment	5,669.25
Total	<u>\$ 1,985,014.97</u>

In support of these values, claimant has submitted a copy of its trial balance for September, 1959, establishing an original cost of the properties of \$2,052,086.01. Claimant has also submitted a copy of its deed to the claimed real properties and a statement of the insured values of the items claimed.

Upon consideration of all the evidence of record, the Commission finds that the valuation most appropriate in this claim and equitable to the claimant is that shown in the trial balance for September, 1959 and adjusted to June, 1961 totalling \$1,985,014.97.

Although the enterprise carried on its terminal activities from September, 1959 to June 26, 1961, claimant has no other records to establish a greater value including accounts receivable.

It is noted that a balance was due and owing the United Fruit Company on the debt secured by the mortgage on the nationalized property on June 26, 1961 in the amount of \$1,138,816.36, which amount must be deducted from the total value of the nationalized assets.

Accordingly, the Commission concludes that claimant sustained a loss in the amount of \$846,198.61, within the meaning of Title V of the Act.

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 NORGULF TERMINALS, INC. suffered a loss, as a result of the 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 Eight Hundred Forty-Six Thousand One Hundred Ninety-Eight Dollars and Sixty-One Cents (\$846,198.61) with interest thereon at 6% per annum from June 26, 1961 to the date of settlement.

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

OCT 8 1969

Leonard v. B. Sutton

Leonard v. E. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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