

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

IN THE MATTER OF THE CLAIM OF

JOHN I. KINCAID

Claim No. CU -6618

Order No. CU -1080

Under the International Claims Settlement
Act of 1949, as amended

Represented by Tropical Gas Co., Inc.

Counsel for Tropical Gas Co., Inc.:

Smathers & Thompson
By Robert F. O'Malley, Esq.

ORDER OF DISMISSAL

This claim, for an unstated amount, against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission, on behalf of a stockholder of Tropical Gas Company, Inc. based upon certain losses which may have been sustained as a result of actions by the Government of Cuba since January 1, 1959.

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.

Thus, in order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established that (1) the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national of the United States to the date of filing claim with the Commission. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].)

Tropical Gas Co., a corporation organized under the laws of the Republic of Panama which does not qualify as a national of the United States, filed Claim No. CU-3018 and petitioned the Commission to be allowed to act as agent for its consenting United States national stockholders. This petition was granted by the Commission.

The submissions of Tropical Gas Co., Inc. included a list of 886 stockholders who so consented at a meeting of April 27, 1967. Claims for such stockholders were opened on that basis.

The Company certified as of September 6, 1968 the names of certain of those stockholders who owned stock on the date of loss and to at least the date of filing of its claim on May 1, 1967.

However, counsel's letter of later date, December 16, 1968 discloses that the Company was unable to certify that the claimant herein owned stock on the date of loss and to at least May 1, 1967.

Since it has not been established that the claimant herein owned interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba on the date of loss, the Commission finds that this claim is not within the purview of Title V of the Act. Accordingly, it is

ORDERED that this claim be and it is hereby dismissed.

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

APR 14 1971

By Order of the Commission



Francis T. Masterson
Clerk