

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

IN THE MATTER OF THE CLAIM OF

M & M DREDGING & CONSTRUCTION CO.
and
C L O CORPORATION

Claim No. CU -0219

Decision No. CU **3536**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Eugene Carusi, 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 aggregate amount of \$1,186,201.00 was presented by M & M DREDGING & CONSTRUCTION CO. and C L O CORPORATION based upon the asserted loss of a dredge, tug, barge, crane, bulldozers, air compressor and related pile driving equipment, supplies and accessories.

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.

Nationality

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 both claimants were organized under the laws of Florida and that at all pertinent times all of both claimants' outstanding capital stock was owned by nationals of the United States. The Commission holds that both claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Ownership

It appears from the evidence of record that M & M DREDGING & CONSTRUCTION CO., hereafter referred to as M & M, was engaged in land reclamation operations in the vicinity of Varadero, Cuba, prior to the advent of the Castro Government in Cuba in January 1959. In connection with these activities, M & M employed the various items of personal property for which claim is made. The evidence includes: (a) two certificates from the U. S. Bureau of Customs, dated August 9, 1961, showing that M & M had been duly registered as the sole owner of a dredge, called the "Cuba," built in 1915, with a gross tonnage of 302, and an "oil screw," called the "Thomas" (identified by claimants as a tug), built in 1942, with a gross tonnage of 16, and that these two vessels were not subject to any mortgages, liens or other encumbrances; (b) a bill of sale registered with the Bureau of Customs showing that C L O CORPORATION, hereafter referred to as C L O, purchased on October 20, 1949 a barge, called the "Atlantis," together with all of its accompanying equipment, being of steel construction and having a length of 230 feet. Neither the age of the vessel nor the consideration paid therefor appear in this document, and it does not appear whether there were any outstanding liens or mortgages against

the vessel; (c) a certificate from the U. S. Coast Guard, dated August 9, 1961, showing that the U. S. Dredging Company, of Miami, Florida, had been duly registered as the sole owner of a dredge tender, called the "Ram" (identified by claimants as a steel workboat), built in 1954 of steel construction with a length of 28 feet 2 inches, a diesel rig and a 165 horse power engine. The cost of construction is not shown.

On the basis of the foregoing evidence, the Commission finds that M & M was the sole owner of the dredge "Cuba" and the tug "Thomas," that C L O was the sole owner of the barge "Atlantis," and that the U. S. Dredging Company was the sole owner of the steel workboat "Ram." The record establishes that the U. S. Dredging Company was organized under the laws of Florida and that at all pertinent times all of its outstanding capital stock was owned by nationals of the United States. The Commission therefore holds that the U. S. Dredging Company was a national of the United States within the meaning of Section 502(1)(B) of the Act. It further appears from the record that on August 30, 1963, the U. S. Dredging Company merged with M & M under the name of M & M DREDGING & CONSTRUCTION CO. Accordingly, M & M succeeded to all rights of the U. S. Dredging Company with respect to the steel workboat "Ram."

On the basis of other evidence of record including bills of sale, certified statements from drydock, machinery and engineering companies, a bill of sale dated November 30, 1948, balance sheets, affidavits and statements from officials of claimants, the Commission finds that M & M also owned a plant, supplies and equipment appurtenant to its dredge "Cuba," a steel crane barge with an Osgood crane, a Lima crane acquired in 1948, a D-6 Caterpillar Bulldozer, a D-4 Caterpillar Bulldozer, a diesel air compressor, and miscellaneous pile driving equipment and accessories.

Loss

All of the foregoing property was being used by M & M in its land reclamation operation in Cuba, the barge "Atlantis" and the steel workboat "Ram" being under lease to M & M. The record includes affidavits dated August 15, 1961 and October 28, 1967, from Gregorio Argelio Medina, a Cuban lawyer who had acted on behalf of M & M in Cuba and was present in Varadero, Cuba in November 1959. According to his testimony, Cuban authorities seized

all of the property for which claim is made herein and precluded him from boarding the dredge "Cuba". Upon his protest to Cuban authorities on behalf of M & M, he was jailed and subsequently compelled to leave Cuba. These facts are confirmed by an affidavit dated September 18, 1961 by Mr. C. Osment Moody, the then president of M & M and the U. S. Dredging Company, and secretary-treasurer of C L O, submitted to the Department of State.

In the absence of evidence to the contrary, the Commission finds that all of the property for which claim is made herein, described above, was taken by the Government of Cuba without compensation on November 7, 1959, as stated by claimants. Accordingly, the Commission further finds that claimants sustained losses within the meaning of Title V of the Act as a result of actions of the Government of Cuba.

Valuation

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimants have computed the amounts of their respective losses on the basis of the costs of replacing their properties with new properties, supported by estimates from various shipbuilding, machinery and equipment concerns, dated in October 1962. Accordingly, the claim of M & M was filed

in the amount of \$1,186,201.00 and the claim of C L O in the amount of \$250,000.00. However, the claim filed with the Department of State in October 1961 asserted the aggregate amount of \$511,950.00 on account of all losses sustained by M & M, C L O and the U. S. Dredging Company.

As noted above, the Commission consistently has construed the language of Section 503(a) relating to the evaluation of loss to be no different from the international legal standard normally prevailing, which the Commission has applied in claims under the Act. The Commission finds no basis for concluding that the statutory reference to "cost of replacement" means the cost of replacing the properties in question with new properties. Upon careful consideration of this matter, the Commission holds that the term "cost of replacement" means replacement in kind, taking into consideration the age and condition of the properties on the date of loss, and that all of the specific bases mentioned in Section 503(a) are merely standards for determining the value of property on the date of loss.

In the instant case, the Commission has carefully considered the entire record bearing on the question of valuation including balance sheets for the U. S. Dredging Company, M & M and C L O, as of January 31, 1956, February 28, 1957, and June 30, 1956, respectively, as well as affidavits from Harold B. Wells and Charles Schultz, dated September 13, 1968, and a statement from a Cuban insurance concern. Mr. Wells testified that he was General Superintendent of Operations in the Republic of Haiti on construction operations involving the dredge "Cuba" and that in 1953-1954 this dredge was converted from steam power to diesel electric power at a cost in excess of \$250,000.00. Similar statements are contained in the affidavit of Mr. Schultz who was Captain and Master Mechanic on the dredge "Cuba". However, Mr. Schultz stated that he did not have access to cost records but appraised the value of the improvements as being in excess of \$250,000.00 on the basis of his experience. Mr. Wells who was an official of the Government of Haiti does not indicate the basis for his statements. The Cuban insurance concern stated in a letter dated October 16, 1968 that the total insurance carried for the property in question was in excess of \$500,000.00.

The Commission notes that the balance sheet for M & M, certified to be a true copy and correct by an officer of M & M, is dated February 28, 1957, subsequent to 1953-1954 when the asserted improvements to the dredge "Cuba" were made. That balance sheet shows the fixed assets as follows:

Autos and trucks	\$ 6,891.78
Key Largo Property	15,267.29
Machinery & Equipment	22,083.00
Office Equipment	2,277.67
Tugs, Barges & Dredges	25,410.02
Warehouse	<u>11,789.29</u>
Total	\$83,719.05
Less Reserve for Depreciation	<u>37,772.82</u>
Net Value of Fixed Assets	<u>\$45,996.23</u>

The balance sheet of the U. S. Dredging Company of January 31, 1956 shows the following capital assets:

Dredges & Equipment	\$149,443.68
Less Reserve for Depreciation	<u>84,983.77</u>
Total Capital Assets	<u>\$ 64,459.91</u>

In neither of the foregoing balance sheets are any of the items identified so that they can be related to the various pieces of personal property involved in this claim. Claimants have stated that they have no other financial statements, and it is clear from claimants' last letter, dated November 21, 1968, that no further evidence is available.

The balance sheet of C L O as of June 30, 1956 shows the following under the heading, "Fixed Assets":

Barge "Atlantis"	\$17,088.52
Buildings	31,562.82
Fence	<u>1,521.50</u>
Total	\$50,172.84
Less Reserve for Depreciation	<u>16,727.41</u>
	\$33,445.43
Land	<u>51,027.40</u>
Net Value of Fixed Assets	<u>\$84,472.83</u>

The record also includes copies of two checks, drawn by M & M in December 1950 in the aggregate amount of \$14,000.00, with notations that the

checks were in payment for the purchase of the steel crane barge. A bill of sale, dated November 30, 1948, shows that M & M purchased a Lima Crane in consideration of \$12,000.00 and a used Lorain Crane "traded in". Other evidence indicating other purchases by M & M of property involved in this claim do not show the costs.

Claimants assert that the values of the various items of personal property claimed herein were as follows on the basis of replacement costs for new properties:

Dredge "Cuba"	\$ 600,000.00
Attendant plant to dredge	53,000.00
Barge "Atlantis"	250,000.00
Steel Crane Barge	25,000.00
Steel Workboat "Ram"	25,000.00
Tug "Thomas"	110,000.00
Lima Crane	37,578.00
D-6 Caterpillar Bulldozer	22,510.00
D-4 Caterpillar Bulldozer	15,298.00
Diesel Air Compressor	20,465.00
Miscellaneous Pile Driving Equipment	<u>27,350.00</u>
Total claim for both claimants	<u><u>\$1,186,201.00</u></u>

Having carefully considered all the evidence of record, the Commission finds that the valuations most appropriate to the properties herein and equitable to the claimants are those set forth in detail in the said affidavit, dated September 18, 1961, of Mr. C. Osment Moody, which was submitted to the Department of State along with supporting documents.

Accordingly, the Commission finds that the values of the properties taken from M & M and from the U. S. Dredging Company, to which M & M succeeded, and the value of the property taken from C L O were as follows on November 7, 1959, the date of loss:

M & M DREDGING & CONSTRUCTION CO.

Dredge "Cuba"	\$225,000.00
Attendant plant and equipment	45,000.00
Tug "Thomas"	40,000.00
Steel crane barge	30,000.00
Lima crane	10,450.00
Steel workboat "Ram"	10,000.00
D-6 Caterpillar Bulldozer	8,000.00
D-4 Caterpillar Bulldozer	6,500.00
Diesel Air Compressor	9,650.00
Miscellaneous pile driving equipment and accessories	<u>27,350.00</u>
Total	<u><u>\$411,950.00</u></u>

C L O CORPORATION

Barge "Atlantis" \$100,000.00

Accordingly, the Commission concludes that the M & M DREDGING & CONSTRUCTION CO. suffered a loss in the aggregate amount of \$411,950.00 (including the loss suffered by the U. S. Dredging Company, to which this claimant succeeded), and that the C L O CORPORATION suffered a loss in the amount of \$100,000.00.

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 M & M DREDGING & CONSTRUCTION CO. 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 Four Hundred Eleven Thousand Nine Hundred Fifty Dollars (\$411,950.00) (including the loss suffered by the U. S. Dredging Company, to which this claimant succeeded), with interest at 6% per annum from November 7, 1959 to the date of settlement; and

The Commission certifies that C L O 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 One Hundred Thousand Dollars (\$100,000.00) with interest at 6% per annum from November 7, 1959 to the date of settlement.

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

FEB 26 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).)