

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

IN THE MATTER OF THE CLAIM OF

NORGULF REALIZATION CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0646

Decision No. CU. 3327

Counsel for claimant:

Bergerman & Hourwich

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 \$1,000,000.00, was presented by NORGULF REALIZATION CORPORATION and is based upon the asserted loss of a pier and terminal in Havana, Cuba previously owned by Norgulf Terminals, Inc. which was a wholly owned subsidiary of North Atlantic & Gulf Steamship Company.

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 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).)

Claimant corporation was organized in accordance with a Plan of Reorganization of North Atlantic and Gulf Steamship Company, Incorporated and an affiliated company in 1962 as an organization of creditors. Claim is made herein for the assets in Cuba of the Norgulf Terminals, Incorporated, a wholly owned subsidiary of the North Atlantic and Gulf Steamship Company.

According to the record, the assets of the Norgulf Terminals, Inc. consisted of a pier and facilities of a terminal and a warehouse in Havana, Cuba which were expropriated by the Government of Cuba by Resolution published in the Official Gazette on June 29, 1961, pursuant to Law 890 of October 13, 1960. Prior to the expropriation, on March 28, 1961, all of the outstanding capital stock of the Norgulf Terminals, Inc. was transferred by Edward Schilling, Trustee for the North Atlantic and Gulf Steamship Company, as a result of a court order requested by the Trustee, to the United Fruit Company in exchange for a general release of all indebtedness owed to that Company.

The Commission therefore concludes that, at the time of loss on June 29, 1961, the Norgulf Terminals, Inc. was owned by the United Fruit Company.

Accordingly, the Commission finds that claimant has not met the burden of proof in that it has failed to establish its ownership of rights and interests in property which was nationalized, appropriated 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 20 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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-0646