

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

IN THE MATTER OF THE CLAIM OF

MARTIN-MARIETTA CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1583

Decision No. CU - 5875

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by Sinclair & Valentine Division of MARTIN-MARIETTA CORPORATION in the amended amount of \$366,113.88 based upon the asserted ownership and loss of a stock interest in a Cuban corporation and loss of payment for merchandise shipped to Cuba. As Sinclair & Valentine Division has no legal entity of its own MARTIN-MARIETTA CORPORATION is substituted as claimant herein.

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.

An officer of the claimant corporation has certified that the claimant was organized in Maryland, that at all pertinent times, more than 50% of the outstanding capital stock of the claimant or its predecessor corporations has been owned by United States nationals and that no more than 5% of such stock has been held by non-United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The amended claim is described as follows:

Accounts receivable based on merchandise shipped	\$202,113.88
Net worth of stock interest in Sinclair & Valentine de Cuba	<u>164,000.00</u>
	\$366,113.88

The evidence establishes and the Commission finds that Sinclair & Valentine de Cuba, hereafter called the Cuban subsidiary, was a wholly-owned subsidiary of Sinclair & Valentine Company, a corporation organized in New York. The record also discloses that in 1957 Sinclair & Valentine Company was acquired by American-Marietta Company, Sinclair & Valentine becoming a division of American-Marietta Company. Thereafter, on October 10, 1961,

the claimant, MARTIN-MARIETTA CORPORATION, became the successor by consolidation between Martin Company and American-Marietta Company, Sinclair & Valentine then becoming a division of claimant corporation. In view of the above the Commission finds that claimant corporation has succeeded to the claim discussed herein.

The record establishes that the Cuban subsidiary was intervened on August 16, 1960 by Resolution No. 14566 pursuant to Law 647 of November 24, 1959.

Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

In presenting its claim, claimant valued its stock interest at \$63,000.00 which was its initial investment (the cost basis).

The record includes a copy of the Cuban subsidiary's balance sheet as of May 31, 1960, and a statement of profit and loss and cost of sales for

the months of May, 1960 and 1959; and for the 5 months ended May 31, 1960 and May 31, 1959. The balance sheet for May 31, 1960 reflects the following, the peso being on a par with the United States dollar:

A S S E T S

Current Assets:

Cash on Hand and in Bank		
Petty Cash	\$	200.00
The Trust Company of Cuba		56,962.15
Deposits in Transit		11,140.47

Accounts Receivable:

Customers Less Reserve		130,658.41	
Officers and Employees		658.39	
Various		3,308.55	
Inventories		68,320.88	
Merchandise in Transit		<u>196.56</u>	\$271,445.41

<u>Stock Investment</u>			400.00
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Fixed Assets:

Plant and Equipment Less Reserve			27,154.02
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Deferred Charges:

Improvement Leased Properties			
Less Reserve	\$	1,141.26	
Installations Expenses Less			
Reserve		2,003.40	
Organizations Expenses Less			
Reserve		185.59	
Prepaid Insurance		2,814.45	
Sundry Deferred Charges		<u>372.13</u>	6,516.83

Other Assets:

Deposits	\$	655.00	
Deposits for Imports Duties		<u>310.00</u>	<u>965.00</u>
			\$306,481.26

L I A B I L I T I E S

Current Liabilities:

Accounts Payable:			
Trade	\$	6,311.31	
Sinclair & Valentine Co.			
Notes Payable	\$	69,292.40	
Open Account		16,950.47	
Miscellaneous		<u>28,510.00</u>	114,752.87

Officers and Employees	\$	440.77	
Accrued Taxes Current Year		2,710.57	
Accrued Vacations Payable		1,577.21	
Commissions Payable		756.88	
Reserve 2% Cash Export Tax		2,418.43	
Reserve for Auditing Expenses		250.00	
Reserve for Claims		2,103.51	
Reserve for Christmas Bonus		875.00	
Reserve for Income Tax		<u>9,240.77</u>	\$141,437.32
Reserve for Deposits on Import Duties			310.00

Capital:

Capital Stock			
Issued and Outstanding			
6,000 shares at \$10.00 each	\$	60,000.00	
Surplus (Deficit)		62,689.34	
Profits Current Year		<u>42,044.60</u>	<u>164,733.94</u>
			<u>\$306,481.26</u>

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown on this balance sheet of May 31, 1960 which indicates that the net worth of the Cuban subsidiary was the capital stock issued and outstanding (\$60,000.00) plus the surplus (\$62,689.34) and the profits (\$42,044.60) or \$164,733.94.

The balance sheet reflects that the liabilities include debts due Sinclair & Valentine Company in the total amount of \$114,752.87. The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

In view of the above, the Commission finds that claimant corporation suffered a loss in the aggregate amount of \$279,486.81, the value of its stock interest and the debts owed its predecessor in interest, as a result of the nationalization of the Cuban subsidiary by the Government of Cuba.

The Commission has decided that in certifications of loss 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

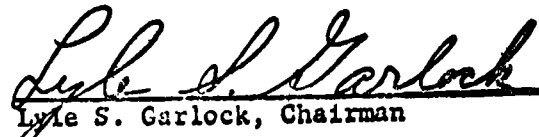
annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

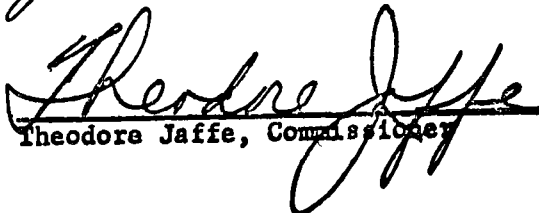
CERTIFICATION OF LOSS

The Commission certifies that MARTIN-MARIETTA 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 Two Hundred Seventy-nine Thousand Four Hundred Eighty-six Dollars and Eighty-one Cents (\$279,486.81) with interest at 6% per annum from August 16, 1960 to the date of settlement.

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

OCT 7 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-0592 involving asserted losses not covered under this Proposed Decision.

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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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