

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

IN THE MATTER OF THE CLAIM OF

PROCON INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2706

Decision No. CU 4634

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 PROCON INCORPORATED in the amount of \$123,088.14 based upon the asserted ownership and loss of personal property in 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 discloses that the claimant was organized in the State of Delaware and that at all times pertinent to this claim more than 50% of the outstanding stock of the claimant corporation has been owned by nationals of the United States; that such stock was wholly owned by the Universal Oil Products Company, a Delaware corporation, and that at all times pertinent to this claim, more than 98% of the outstanding shares of stock were held by persons with registered addresses within the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based on tools and oil refinery parts which were maintained at an oil refinery owned by The Texas Company (West Indies) Limited, located at Santiago, Cuba.

The evidence of record includes correspondence between claimant and the State Department in 1960-1961 and communications with the Government of Cuba concerning certain tools, merchandise and equipment stored by claimant at the Texaco refinery in Santiago, Cuba. The record also includes detailed lists of such personal property, affidavits, inter-office memoranda of claimant, and evidence submitted in the claim of Texaco Incorporated (Claim No. CU-1331).

The record establishes that claimant and a subsidiary designed and constructed certain refining process units for The Texas Company (West Indies) Limited, a subsidiary of Texaco Incorporated, located at

Santiago, Cuba, and that the personal property was purchased by claimant in 1956-1957 but had not been utilized in the operation of the refinery units, being held for replacement purposes in maintaining the refining process units for the Texaco refinery.

The Commission finds that claimant owned and maintained tools, equipment and materials at the Texaco refinery in Santiago, Cuba; and that such personal property was taken by the Government of Cuba when the Texaco facilities were intervened on June 29, 1960, pursuant to Resolution 188 of June 28, 1960 (see Claim of Texaco Incorporated, Claim No. CU-1331, supra).

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 Commission has considered the evidence submitted by claimant and related material in the claims of the Texaco companies, as well as evidence available to the Commission concerning the value of similar

properties in Cuba. The evidence herein establishes that the tools, parts and equipment were utilized in maintaining in good repair the refining process units and that this personal property had not been used in operating such refining process facilities. Thus, the Commission finds that depreciated values are not applicable to the instant claim for such property which was not affixed to the refinery units, but held in reserve for replacement purposes, as needed, in such maintenance. Accordingly, based upon the entire record, the Commission finds that the replacement values, as computed by claimant at the time of loss in 1960, represent the most appropriate basis for evaluation of such personal property.

Accordingly, the Commission finds that claimant suffered a loss in the total amount of \$123,088.14, within the meaning of Title V of the Act as a result of the intervention of the personal property, subject of this claim, by the Government of Cuba, on June 29, 1960.

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.

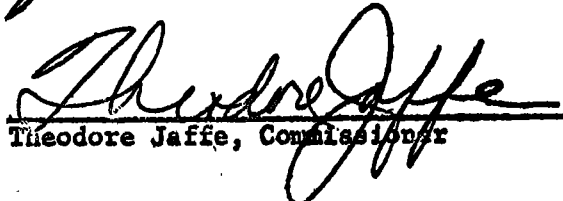
CERTIFICATION OF LOSS


The Commission certifies that PROCON INCORPORATED 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 Twenty-three Thousand Eighty-eight Dollars and Fourteen Cents (\$123,088.14), with interest thereon at 6% per annum from June 29, 1960, to the date of settlement.

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

18 MAR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)