

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

IN THE MATTER OF THE CLAIM OF

CARIBBEAN ENTERPRISES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2777

Decision No. CU 4683

Counsel for claimant:

George M. Skelly, Jr., Esq.

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 CARIBBEAN ENTERPRISES, INC. in the amount of \$385,026.67 based upon the asserted loss of investments 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 shows that CARIBBEAN ENTERPRISES, INC. was organized under the laws of Delaware in 1947 and all of its outstanding capital stock has been owned at all times by United Fruit Company which was organized under the laws of New Jersey. An authorized officer of the parent company has certified that more than 50% of the parent's outstanding capital stock was owned by United States nationals at all pertinent times and that 98.2% of its outstanding capital stock was owned by United States nationals on February 27, 1968. The Commission holds that the United Fruit Company and claimant are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts a loss in the amount of \$385,026.67 for the assets of Compania Tropical de Seguros, S.A. and Compania Cubana de Navegacion Costanera, both organized under the laws of Cuba. The Commission finds that claimant was the sole owner of the Cuban enterprises Compania Tropical de Seguros, S.A. and Compania Cubana de Navegacion Costanera which were nationalized by the Government of Cuba on August 6, 1960 by Resolution No. 1 of August 6, 1960 pursuant to Law 851 of July 6, 1960.

The amounts claimed for the Cuban enterprises are as follows:

Compania Tropical de Seguros, S.A.		
Furnishings & Movable Equipment	\$ 718.48	
Securities	190,858.37	
Cash	<u>120,625.09</u>	\$312,201.94
Compania Cubana de Navegacion Costanera		
Boats	<u>72,824.73</u>	<u>72,824.73</u>
Total Claimed		\$385,026.67

The amount of loss is limited to the asserted value of the assets of the Cuban enterprises. The Commission, however, has consistently held that losses through investments in Cuban companies are to be determined on the basis of their net worth, not merely the value of the assets. The losses for the two enterprises are as determined below.

The claimant has submitted a balance sheet for each corporation "as of December 31, 1960." Inasmuch as both corporations were nationalized on August 6, 1960 and claimant asserts that it "never received any information from the Cuban enterprises" thereafter, the December 31, 1960 balance sheet may be accepted as a statement of the corporations' condition on August 6, 1960, the date of taking.

Compania Tropical de Seguros, S.A.

Claimant has submitted affidavits and a balance sheet constructed from records in claimant's file supporting the values of this company's assets as set forth above. The balance sheet shows an asset total of \$405,005.70, a liability total of \$164,902.16, and a net worth of \$240,103.54. The assets, however, include a sum of \$41,971.37 due from the United Fruit Sugar Company and the United Fruit Company, both United States nationals, whose debts may not be considered by the Commission unless they are secured by property which has been nationalized or otherwise taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

Upon consideration of the entire record, the Commission finds that the most appropriate measure of the loss on August 6, 1960 for Compania Tropical del Seguros, S.A. is the net worth, based upon the said balance sheet, less the accounts due from United States nationals or \$198,132.17.

Compania Cubana de Navegacion Costanera

The value claimed for the nationalization of this Cuban entity is the December 31, 1959 book value of three ships owned and operated by it in a maritime towing business. The ships were the only assets of the company as set

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forth in the above-mentioned balance sheet. The value of the assets therein was listed as \$68,711.48, the liability total was \$21,927.27 which made a net worth of \$46,784.21. The Commission finds that the most appropriate measure of the loss on August 6, 1960 for Compania Cubana de Navegacion Costanera is the net worth of \$46,784.21 based upon the said balance sheet.

Accordingly, the Commission concludes that claimant sustained a total loss in the amount of \$244,916.38 on August 6, 1960 as a result of the nationalization of Compania Tropical de Seguros, S.A. and Compana Cubana de Navegacion Costanera, within the meaning of Title V of the Act.

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.

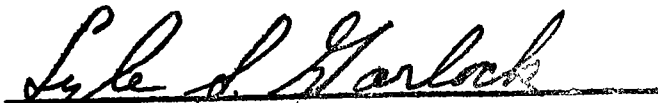
CU-2777


CERTIFICATION OF LOSS

The Commission certifies that CARIBBEAN ENTERPRISES, INC. 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 Forty-Four Thousand Nine Hundred Sixteen Dollars and Thirty-Eight Cents (\$244,916.38) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

1 APR 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).)