

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

IN THE MATTER OF THE CLAIM OF

KAISER ALUMINUM &
CHEMICAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2849

Decision No. CU **3704**

Counsel for claimant:

Michael Ledgerwood, 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 amount of \$324,590.29, was presented by KAISER ALUMINUM & CHEMICAL CORPORATION based upon the nationalization of its subsidiary in Cuba and debts owed to claimant by said subsidiary.

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 claimant was organized under the laws of Delaware. An authorized officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. Another officer of claimant has certified that as of January 1, 1968, approximately 98% of claimant's outstanding capital stock was owned by nationals of 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 evidence establishes that pursuant to an agreement of March 4, 1959, between claimant and Mexico Refractories Company, a Missouri corporation, there was a merger of these two corporations so that Mexico Refractories Company ceased to exist and all its assets and liabilities were transferred to claimant which retained its present name. The Commission finds that as a result of this merger, claimant acquired in 1959 all of the outstanding capital stock of Productos Refractorios Mexico de Cuba, S.A., a Cuban corporation, hereafter called the subsidiary.

The Commission finds, on the basis of statements from individuals having personal knowledge of the facts, that the Government of Cuba intervened the subsidiary on April 28, 1962, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

The record shows that the subsidiary was organized under the laws of Cuba and therefore does not qualify as a corporate "national of the United

States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (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". 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.

Claimant has computed its claim as follows:

Land	\$ 42,455.67
Personal property	206,699.19
Securities	60,179.28
Debts	<u>15,256.15</u>
Total	<u>\$324,590.29</u>

Claimant states, in effect, that the foregoing constitutes the assets of the subsidiary for which claim is made. In support of its claim, claimant submitted an audited balance sheet of the subsidiary as of December 31, 1960. It asserts that it is unable to supply many of the details and relies upon the said balance sheet, the last available financial statement from Cuba.

Upon careful consideration of this matter, the Commission finds that the valuation most appropriate to the properties and equitable to the claimant is that shown in the balance sheet as of December 31, 1960, except as indicated below. The balance sheet indicates the financial condition of the subsidiary as follows (the Cuban peso being on a par with the United States dollar):

A S S E T S

CURRENT ASSETS:

Cash			\$177,118.93
Accounts receivable:			
Trade	\$14,579.85		
Less reserve	<u>7,592.21</u>	\$ 6,987.64	
Accrued interest receivable		676.30	
Other (including advances to officer and employee \$512.97)		<u>644.92</u>	8,308.86
Inventories, at cost			<u>19,357.73</u>
Total current assets			204,785.52

INVESTMENTS, AT COST LESS
RESERVE \$4,229.28

22,950.00

FIXED ASSETS, AT COST:

Land		42,455.67	
Equipment	8,614.83		
Furniture	2,116.93		
Automobile	<u>2,955.00</u>		
	13,686.76		
Less reserve for depreciation	<u>3,464.23</u>	<u>10,222.53</u>	
Fixed assets - net			52,678.20

OTHER ASSETS AND DEFERRED CHARGES:

Prepaid insurance		61.80	
Guarantee deposit		81.00	
Clay exploration expenses	8,376.21		
Less reserve	<u>8,376.21</u>	-	
Organization expenses, less amortization \$925.80		925.85	
Trade marks		80.00	
Other prepayments		<u>24.86</u>	

 Total other assets and deferred charges 1,173.51

 Total Assets \$281,587.23

LIABILITIES

CURRENT LIABILITIES:

Accounts payable		\$	144.54
Accrued expenses			921.91
Accrued taxes (subject to review by tax authorities):			
Profits tax	\$	1,898.08	
Tax on exportation of funds		4,072.19	
Other		<u>1,011.19</u>	6,981.46
Due to Parent Company (U.S. \$194,678.29)			<u>194,678.29</u>
Total current liabilities			202,726.20

CAPITAL STOCK AND EARNED SURPLUS:

Capital stock:			
Authorized, 5,000 shares of \$100.00 par value each		<u>\$500,000.00</u>	
Issued and outstanding 320 shares of \$100.00 par value each		32,000.00	
Earned surplus		<u>46,861.03</u>	
Total capital stock and earned surplus			<u>78,861.03</u>
Total Liabilities and Capital			<u>\$281,587.23</u>

It appears, however, that certain adjustments are warranted. The balance sheet contained a note from the auditors to the effect that the "reserve of \$4,229.28 for investments is substantially understated". Claimant has set forth the claim for investments as follows:

Stock in Industrial Alfarera Cubana	\$33,000.00
Bonds of Compania Cubana de Electricidad (Cuban Electric Company)	<u>27,179.28</u>
Total Securities claimed	<u>\$60,179.28</u>

The record shows that Industrial Alfarera Cubana, a Cuban corporation, was nationalized by the Government of Cuba on July 7, 1961, pursuant to a publication on that date in its Official Gazette. Accordingly, the Commission finds that claimant sustained a loss within the meaning of Title V of the Act on July 7, 1961 as to that item. Claimant has based its claim in this respect upon the cost in acquiring the foregoing stock. No balance sheets or other financial statements concerning this corporation have been submitted. In the absence of evidence to the contrary, the Commission finds that the value of the subsidiary's stock interest in Industrial Alfarera Cubana on July 7, 1961 was \$33,000.00.

The subsidiary's other securities, bonds of the Cuban Electric Company, however, involve other circumstances inasmuch as the Cuban Electric Company is a United States national. Pursuant to Section 505(a) of the Act, a claim for the debt of an American concern may be considered only if such debt was a charge on property taken by Cuba.

The record indicates that the subsidiary owned 27 bonds of the Cuban Electric Company, each in the amount of 1,000 pesos, equivalent to \$1,000.00. These bonds had been on deposit with the National Bank of Cuba. Based upon all the evidence of record, including a statement, dated December 27, 1967, from the former manager of the subsidiary, and a letter, dated July 12, 1961, from an officer of the subsidiary to the National Bank of Cuba, in which the bonds were described as well as a Schedule of Long-term Debt of the Cuban Electric Company in which no such bonds appear, the Commission finds it is not established that these 27 bonds represented debts which were a charge on property taken by Cuba. Accordingly, the portion of the claim based upon bonds of the Cuban Electric Company is denied. (See Claim of The First National Bank of Boston, Claim No. CU-2268, Final Decision entered February 26, 1969.)

Claimant has stated that none of its subsidiary's accounts receivable were due from American concerns.

Accordingly, the Commission finds that the value or net worth of claimant's subsidiary on April 28, 1962, excluding the loss sustained on July 7, 1961 with respect to the stock interest in Industrial Alfarera Cubana (which is hereinafter accounted for), was as follows:

Assets	\$258,637.23
Liabilities	<u>202,726.20</u>
Net Worth	<u>\$ 55,911.03</u>

The evidence of record, however, establishes that the subsidiary was indebted to claimant in the amount of \$194,678.29. The Commission, therefore, concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act as a result of the intervention of the subsidiary by the Government of Cuba on April 28, 1962. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The Commission therefore concludes that claimant sustained losses as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock interest in Industrial Alfarera Cubana	July 7, 1961	\$ 33,000.00
Subsidiary	April 28, 1962	55,911.03
Debt from Subsidiary	April 28, 1962	<u>194,678.29</u>
Total		<u>\$283,589.32</u>

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 KAISER ALUMINUM & CHEMICAL 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 Eighty-three Thousand Five Hundred Eighty-nine Dollars and Thirty-two Cents (\$283,589.32) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 19 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 for 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).)