

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

IN THE MATTER OF THE CLAIM OF

BOISE CASCADE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 3548

Decision No. CU - 3866

Counsel for claimant:

Reid & Priest
By Richard C. Allison, Esq.

AMENDED PROPOSED DECISION

Under date of September 11, 1969, the Commission issued its Proposed Decision certifying a loss in favor of EBASCO INDUSTRIES, INC., claimant's name of record, in the amount of \$11,745,959.55, plus interest.

By letter, dated September 15, 1969, counsel for claimant advised the Commission that as of August 31, 1969 claimant was merged with and into BOISE CASCADE CORPORATION. Accordingly, it is

ORDERED that the certification of loss, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that BOISE CASCADE 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 Eleven Million Seven Hundred Forty-Five Thousand Nine Hundred Fifty-Nine Dollars and Fifty-Five Cents (\$11,745,959.55) with interest thereon 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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)

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

IN THE MATTER OF THE CLAIM OF

EBASCO INDUSTRIES INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3548

Decision No. CU 3868

Counsel for claimant:

Reid & Priest
By Richard C. Allison, 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 amended amount of \$42,714,767.55 plus interest, was originally presented by American & Foreign Power Company, Inc., predecessor in interest to EBASCO INDUSTRIES INC., based upon the asserted loss of certain real property in Cuba and bonds issued by the Cuban Electric 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 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 American & Foreign Power Company, Inc., was merged with and into Electric Bond & Share Company on December 31, 1967 and the name subsequently changed to EBASCO INDUSTRIES INC., which is substituted as claimant herein. The American & Foreign Power Company, Inc. was organized under the laws of the State of Maine and an officer of that corporation has certified that at all times more than 50% of its outstanding capital stock has been owned by nationals of the United States and that as of May 25, 1966, holders of .0017% of its outstanding capital stock had addresses outside the United States. An officer of Electric Bond & Share Company has certified that at all pertinent times the number of shares of its outstanding capital stock owned by non-residents of the United States has never exceeded 3%. The Commission holds that American & Foreign Power Company, Inc., Electric Bond and Share Company, and EBASCO INDUSTRIES INC. qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is made herein for losses assertedly sustained by the American & Foreign Power Company, Inc. for the following:

1. A 53.22362% interest in real property known as "La Puntilla" located in Marianao, Havana Province, Cuba;

2. First and Refunding Mortgage Bonds, 4 1/4% Peso Series Due 1980; First Mortgage Bonds 4 1/4% Dollar Series Due 1980; First Mortgage Bonds, 4 1/4% Dollar Series B Due 1980; First Mortgage Bonds, 5% Peso Series C, Due 1980; and First Mortgage Bonds, 5% Peso Series D, Due 1987 issued by the Cuban Electric Company, and having a total principal amount of \$11,330,300;
3. A contractual right to receive bonds in the amount of \$26,135,000 issued by the Cuban Electric Company; and
4. A contractual right to receive an additional amount of bonds in the principal amount of \$3,800,000 in return for cancelling a demand note of the Cuban Electric Company.

1. Real Property

Claimant asserts a loss in the amount of \$113,898.55 for a 53.22362% interest in land in Marianao, Havana Province, Cuba. In support of this portion of the claim, a copy of a deed to Edward L. Kanter dated October 7, 1954 and an affidavit of Mr. Kanter have been submitted. By the terms of the deed, the Havana & Insular Real Estate Company conveyed a parcel of land having an area of 6,160.90 square meters to Edward L. Kanter for the sum of \$214,000.00, which land was located in Marianao, Cuba. According to the affidavit of Edward L. Kanter, the land was conveyed to him for the benefit of Cuban Electric Company and American & Foreign Power Company, Inc. Cuban Electric Company has also filed its separate claim No. CU-2578 in the amount of \$100,101.45 for the remaining interest in the land which both companies valued at the purchase price of \$214,000.00. The Commission finds that the purchase price represented the value of the property at the time it was confiscated.

The record also contains the affidavit of Armando Leret, an attorney who formerly practiced in Cuba. This instrument shows that he was acquainted with the interests of the two companies in the Marianao property; that he frequently went past the property; and that in February, 1960 it was occupied by an organization of the Cuban Government which had started some construction thereon.

The Commission finds that claimant owned a 53.22362% interest in 6,160.90 square meters of land in Marianao, Cuba and that it was taken by the Government of Cuba on February 1, 1960. As a result of the actions of the Government of Cuba, the Commission concludes that claimant sustained a loss by the confiscation of said land in the amount of \$113,898.55 within

2. Mortgage Bonds of the Cuban Electric Company

Claim is made for the principal and unpaid interest due on August 6, 1960 on the following bonds issued by the Cuban Electric Company:

<u>Bonds</u>	<u>Principal</u>	<u>Interest</u>
First and Refunding Mortgage Bonds	\$ 615,500.00	24,923.00
4 1/4% Peso Series, 1980		
4 1/4% Dollar Series, 1980	8,500,000.00	216,750.00
First Mortgage Bonds		
4 1/4% Dollar Series B, 1980	1,965,000.00	50,108.00
First Mortgage Bonds		
5% Peso Series C, 1980	35,800.00	1,045.00
First Mortgage Bonds		
5% Peso Series D, 1987	214,000.00	8,935.00
Total	<u>\$11,330,300.00</u>	<u>\$301,761.00</u>

On the basis of evidence of record, the Commission finds that claimant is and since prior to August 6, 1960 has been the owner of the above described bonds issued pursuant to a Mortgage and Deed of Trust dated as of January 1, 1950, as supplemented, with the First National City Bank of New York as Trustee. By that indenture and the supplements thereto, the bonds issued thereunder were secured by the property in Cuba of the Cuban Electric Company, a corporation organized under the laws of the State of Florida which qualifies as a national of the United States. The properties of the Cuban Electric Company were listed as nationalized by Resolution No. 1 (pursuant to Law 851 of July 6, 1960) of the Government of Cuba effective August 6, 1960. Claimant's bonds therefore represented a debt which was a charge upon nationalized property as defined in Section 502(3) of the Act. The Commission concludes that as a result of the nationalization of the properties of the Cuban Electric Company in Cuba, claimant suffered a loss in connection with its bonds within the meaning of Title V of the Act.

The Commission finds that the total amount of the unpaid indebtedness on claimant's bonds including the principal amounts and interest due to August 6, 1960 is as follows:

<u>Bonds</u>	<u>Principal</u>	<u>Interest</u>
First and Refunding Mortgage Bonds	\$ 615,500.00	\$ 24,923.00
4 1/4% Peso Series 1980		
4 1/4% Dollar Series 1980	8,500,000.00	216,750.00
First Mortgage Bonds		
4 1/4% Dollar Series B 1980	1,965,000.00	50,108.00

First Mortgage Bonds		
5% Peso Bonds Series C 1980	35,800.00	1,045.00
First Mortgage Bonds		
5% Peso Series D 1987	<u>214,000.00</u>	<u>8,935.00</u>
	\$11,330,300.00	\$301,761.00

for a total loss of \$11,632,061.00.

3. Contractual Right to Receive Bonds of \$26,135,000.00 Value

Claimant asserts a loss in the amount of \$26,135,000.00 on the basis of Dollar-Peso Bond Agreements with the Cuban Electric Company. During the period 1952-1957, it became necessary for the Cuban Electric Company to borrow funds from the Export-Import Bank in Washington and Financiera Nacional de Cuba in Havana. To provide the required collateral for loans, Dollar and Peso Mortgage Bonds issued by Cuban Electric Company and held by claimant were borrowed from claimant by the Company. Under the Dollar-Peso Agreements, claimant was to be repaid by bonds or in cash semi-annually beginning December 31, 1957. Under the terms of the Agreements, claimant would receive interest on the principal at the rate of 3/4 of one per cent per annum and, at the maturity of the coupons attached to the borrowed Dollar Bonds and Peso Bonds, such coupons would become the property of claimant. On August 6, 1960 when Cuban Electric Company's assets were nationalized, the principal amount still due and owing to claimant was \$26,135,000.00.

Section 505(a) of the Act provides:

. . . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant contends that, since it was entitled to receive mortgage bonds of the Cuban Electric Company in payment of the borrowed bonds, the obligation was a charge on its property. The terms of the Agreements, however, gave the debtor the option of paying the specified semiannual payment in cash or in mortgage bonds. Additionally, the amounts unpaid were listed in the 1959 Annual Report of the Cuban Electric Company on Page 14, Schedule of Long-Term Debt, as Loans Payable to American & Foreign Power Company, Inc. (claimant's predecessor in interest) and in Note A to that Schedule reference is made that these loans may be satisfied either by delivery of mortgage bonds or payment of cash.

Claimant, therefore, by the terms of the Agreements had surrendered the secured obligations of Cuban Electric Company in exchange for the right to receive similar secured obligations or cash at a future date, neither of which it received. Even though the obligor was the wholly-owned subsidiary of claimant and the exchange was not an arms-length transaction, the failure to receive secured bonds is not a basis for determining a loss in its favor under the Act. It would appear that the Export-Import Bank of Washington, which holds the collateral, is the proper party claimant for these bonds. Unfortunately, however, that bank cannot join in this claim because it is an agency of the United States Government and is not an eligible claimant under Title V of the Act. (See Claims of the United States of America, Claim No. CU-2522 and Claim No. CU-2618, 1967 FCSC Ann. Rep. 50). That does not mean, though, that at some time in the future the bank, or the American Government, will not have a claim for this loss under a new statute or in direct negotiations with Cuba.

On the basis of the evidence of record, the Commission concludes that the obligation to pay claimant the amount of \$26,135,000.00 under the terms of the Dollar-Peso Agreements for the Mortgage Bonds borrowed and used as collateral for subsequent loans was not a charge upon property as specified in Section 505(a) of the Act. Accordingly, this portion of the claim is denied.

4. Contractual Right to Receive Bonds of \$3,800,000.00 Value

By agreement dated December 30, 1954, Cuban Electric Company agreed to authorize the issuance of mortgage bonds to claimant's predecessor in an amount of not less than \$3,800,000.00 in exchange for the cancellation of a note in the principal amount of \$3,800,000.00. The bonds to be issued were to be secured by a mortgage on the Cuban property of the Cuban Electric Company. The debtor was to pay interest at the rate of 5% per annum from the date of the Agreement to the date of issuance of the bonds. No bonds, however, were issued by Cuban Electric Company in performance of its obligations under the Agreement.

In order that the amount of \$3,800,000.00 plus interest be certifiable as a loss under the Act, it must be established that the amount was in fact, a charge on property which had been nationalized, expropriated, intervened, or taken by the Government of Cuba (Section 505(a), supra).

The only evidence of record here, however, establishes that claimant had an unsecured demand note for the amount of \$3,800,000. which it agreed to cancel in exchange for secured bonds of the Cuban Electric Company. Cuban Electric Company entered into the agreement with claimant in 1954 but did not perform its part of the agreement since the bonds were never issued. Inasmuch as claimant did not receive the secured bonds but merely has a contract which has not been specifically performed, the Commission concludes that the debt is not a charge on property which has been taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

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 respective dates 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 as follows:

<u>FROM</u>	<u>ON</u>
February 1, 1960	\$ 113,898.55
August 6, 1960	<u>\$11,632,061.00</u>
	\$11,745,959.55

CERTIFICATION OF LOSS

The Commission certifies that EBASCO INDUSTRIES 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 Eleven Million Seven Hundred Forty-Five Thousand Nine Hundred Fifty-Nine Dollars and Fifty-Five Cents (\$11,745,959.55) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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SEP 11 1969

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