

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

IN THE MATTER OF THE CLAIM OF

CONTINENTAL OIL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3590

Decision No. CU 2969

Counsel for claimant:

Richard Millan, 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 \$1,419,182.02, was presented by CONTINENTAL OIL COMPANY, and is based upon the asserted loss of debts and a bank account located 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. 188 (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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Sup. 1967).)

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.

This claim is based upon a bank account maintained in the Havana branch of the Royal Bank of Canada; an account receivable due from a subsidiary of a predecessor corporation; and the predecessor's investment in that subsidiary.

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Claimant asserts the ownership of this claim as the result of asset transfers, liquidation of, and merger with, several predecessor corporations and a subsidiary thereof, including American Agricultural Chemical Company (New Jersey); Fos-Kem Liquidation Corporation; and two Delaware corporations known as American Agricultural Chemical Company. The record indicates that the last of these predecessors merged with claimant corporation on December 31, 1965, and now operates as a division of claimant under the name of Agrico Chemical Company. Claimant itself is a Delaware Corporation.

Claimant has not submitted statements by officers of its predecessors to establish that 50% of their outstanding capital stock was owned by a national or nationals of the United States from the date of loss to the date on which the claim was filed. Such evidence is required under the provisions of Sections 502(1)(B) and 504 of the Act.

By Commission letter of October 24, 1967, claimant was advised, through counsel, of the type of evidence proper for submission to establish this claim under the Act. On November 28, 1967, counsel requested and was granted additional time to submit such evidence. Additional suggestions were made by Commission letter of February 12, 1968.

On April 9, 1968 claimant, through counsel, was invited to submit the suggested evidence within 45 days, and claimant was informed that, absent such evidence, it might become necessary to determine this claim on the basis of the existing record. No response has been received, and the suggested evidence has not been submitted.

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The Commission therefore finds that claimant has not met the burden of proof, in that it has failed to establish ownership, by a national or nationals of the United States, of rights or interests in property which was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba. Neither has claimant shown that the claim therefor has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing claim.

Accordingly, this claim is denied. The Commission deems it unnecessary to determine other elements of this claim.

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

AUG 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)