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

IN THE MATTER OF THE CLAIM OF

AOFC, INC.

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-3671
Claim No. CU-3672

Decision No. CU-5894

Counsel for claimant: Curtis, Mallet-Prevost, Colt & Mosle

Appeal and objections from a Proposed Decision entered on October 14, 1970; oral hearing requested.

Oral hearing held on March 17, 1971.

FINAL DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision denying these claims for the reason that the claims failed to meet the nationality prerequisites of Section 504(a) of the Act.

The undisputed facts are as follows: Claim No. CU-3671 arose in favor of a United States national corporation, and was thereafter transferred to a non-United States national corporation, a Canadian entity, while Claim No. CU-3672 arose in favor of that Canadian corporation. Prior to the date of filing with the Commission, the claims were transferred to a United States national corporation, the claimant in both cases.

On the basis of these facts the Commission held that the claims were not owned by nationals of the United States continuously from the dates they arose until the date of filing, and the claims were denied pursuant to the express provisions of Section 504(a) of the Act.

Counsel for claimant objected to the Proposed Decision, submitted a supporting brief, and requested an oral hearing which was held on March 17, 1971.

At that hearing counsel submitted a supplementary brief and argued before the Commission on behalf of claimant. The burden of the argument was that about 75 percent of the outstanding capital stock of the Canadian corporation was owned by United States nationals at all pertinent times, thereby assertedly satisfying the prerequisites of Section 504(a) of the Act. On that basis counsel contended that the claims are valid to that extent, and urged that they be allowed pro tanto. In effect, counsel argued that the claims were owned by the stockholders of the Canadian corporation, which stockholders transferred their claims to the United States national corporation that filed the claims with the Commission.

Upon consideration of the entire record, the Commission finds no merit in counsel's contentions. The Commission has, over the years, administered several claims programs authorized pursuant to other titles of the same Act here under consideration, in which there were identical provisions insofar as the nationality prerequisites and claims for stock interests in corporations are concerned.

In a claim directly in point filed under Title III of the Act, it appeared that an American individual directly suffered the loss in question, and his claim was later acquired by a domestically organized corporation that filed the claim with the Commission. The record showed that, except for the period between 1944 and 1949, more than 50 percent of that claimant's outstanding capital stock was owned by United States nationals from the date of acquisition of the claim by claimant until the date of filing with the Commission. In that period of about five years, more than 50 percent of the stock was owned by Mexican nationals.

The Commission held that the claim was not owned by nationals of the United States continuously from the date it arose until the date of filing with the Commission, and the claim was denied. (See Claim of American Trust Company, Claim No. SOV-42,528, cited as a precedent of the Commission with respect to nationality prerequisites, at 6 FCSC Semiann. Rep. 21 [Jan.-June 1957].)

The Commission has consistently adhered to that principle in determining claims under the Act. The Commission reaffirms its holding that the claim of a legal entity, such as a corporation, is owned by the corporation like any other of its assets and not by its stockholders. Under Title V of the Act, when a claim has arisen in favor of a corporation, the corporate veil may be pierced and its American stockholders may claim their proportionate direct stock interests only if (1) the claim arose in favor of a non-United States national corporation, and (2) that corporation continued to own the claim until the date of filing.

In the instant case, Claim No. CU-3671 arose in favor of a United States national corporation, but subsequently was acquired by a Canadian corporation. The Commission finds that that claim then ceased to have the requisite character to serve as a basis for a certification under Title V and this is so irrespective of whether a small percentage or all of the Canadian corporation's outstanding capital stock was owned by nationals of the United States. The stockholders of the Canadian corporation owned no claim which they could validly assign to the American corporation that filed the claim. Claimant, having thus acquired from the Canadian corporation a claim which could not be certified under Title V, can occupy no better position than its predecessor in interest.

Claim No. CU-3672 arose in favor of a non-United States national corporation but that corporation did not retain the claim until the date of filing, but transferred it to a United States national corporation that

filed the claim. Since that claim arose in favor of a nonnational of the United States, the claimant acquired another claim which was invalid, so far as Title V is concerned, on the date of loss. The claim was not retained by the Canadian corporation until the date of filing, and therefore its American stockholders could neither file a claim based upon their proportionate interests as permitted by Title V, nor assign a valid claim to the American claimant.

Therefore, the Commission finds no basis for altering the decision previously entered. Accordingly, the Proposed Decision of October 14, 1970 is affirmed in all respects.

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

APR 21 1971

Lyle S. Garlock, Chairman

Theodore Jaffe, Commissioner

CU-3671
CU-3672

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AOFC, INC.

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Claim No.CU -3671
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Counsel for claimant: Curtis, Mallet-Prevost, Colt & Mosle

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by AOFC, INC. Claim No. CU-3671 in the amount of $711,044.98 is based upon debts due from a Cuban corporation. Claim No. CU-3672 in the amount of $250,250.00 is based upon a stock interest in another Cuban corporation.

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.

An authorized officer of claimant has certified that claimant was organized under the laws of New York on December 20, 1962, and that at all times from that date until the date of filing claim all of claimant's outstanding capital stock was owned by the International Basic Economy Corporation, also organized under the laws of New York. That officer, who is also an officer of the parent corporation, has certified that at all pertinent times more than 50% of the parent's (IBEC) 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 facts in both of these claims are undisputed. It appears from the record (CU-3671) that a loan was made in 1956 by an American corporation, AOF Corp., to a Cuban corporation, Acetafil, S.A. In 1957 the AOF Corp. dissolved and all its rights under the loan agreement were transferred to AOF Co., a corporation that qualifies as a national of the United States under Section 502(1)(B) of the Act.

Apparently regular payments on account of the loan were made by the Cuban corporation until December 1, 1959 when an amount on account of principal and interest became due. The Cuban corporation took appropriate steps to send the funds to the United States through the National Bank of Cuba. However, the Cuban authorities barred the transfer pursuant to the foreign

exchange laws of Cuba. As a result the funds were never sent to AOF Co., and no further payments on account of the loan were ever made. The record contains a copy of a letter, dated November 26, 1959, from an officer of the Cuban corporation to AOF Co. indicating that the Cuban corporation had sufficient funds to make the payment due on December 1, 1959. It further appears from claimant's statements that the Cuban corporation was intervened by the Government of Cuba in October 1960.

The record (CU-3672) shows that on April 5, 1957, Transoceanic Development Corp., Ltd., a corporation organized under the laws of Canada, acquired 2,500 Class B shares of common stock in Cia. Antillana de Acero, S.A., a corporation organized under the laws of Cuba. The evidence includes a copy of Resolution No. 1, issued by the Cuban Ministry of the Treasury on March 25, 1960, pursuant to which Cia. Antillana de Acero, S.A. was intervened. The Commission so found in Claim of Independence Foundation, Claim No. CU-2152.

On January 20, 1960, AOF Co. dissolved and merged into the Canadian corporation, and all its rights under the said loan agreement were transferred to the Canadian corporation. Therefore as of January 20, 1960, the Canadian corporation owned 2,500 shares of stock in Cia. Antillana de Acero, S.A. and the said rights under the loan agreement, which constitute the properties upon which both of the claims herein are based. It further appears from claimant's statements that on December 20, 1962, IBEC acquired all the outstanding shares of stock of the Canadian corporation, and caused its wholly-owned subsidiary, AOFC, INC., claimant, to be organized. On December 31, 1962, IBEC caused the Canadian corporation to transfer all of its assets, including the subject matters of these claims, to claimant.

With respect to Claim No. CU-3671, the Commission has held that the Cuban Government's implementation of Law 568 of September 29, 1959, concerning foreign exchange, was not in reality a legitimate exercise of sovereign authority, but constituted an intervention by the Government of Cuba in the contractual rights of those who, like AOF Co., were thus adversely affected, and resulted in a taking of property within the meaning of Section 503(a) of

the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.) Accordingly, the Commission finds that on or about December 1, 1959 property belonging to AOF Co. was lost as a result of intervention by the Government of Cuba in the contract with Acetafil.

In March 1960, a loss of property was sustained by the Canadian corporation by intervention of Antillana. On December 31, 1962, claimant succeeded to both losses.

The sole issue presented by these claims involves the meanings of Sections 504(a) and 505 of the Act.

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.

In other words, a claim filed under Section 503(a) of the Act "shall" not be considered unless it was owned, in whole or in part, directly or indirectly, by a national of the United States on the date of loss, and unless it was so owned continuously thereafter until the date of filing with the Commission. The test applied in this respect is whether each owner of the claim from the time it arose until filing with the Commission qualifies as a national of the United States, as defined by Section 502 of the Act. Accordingly, the Commission has held consistently that if there is any break in the chain of United States nationality at any time between the date of loss and the date of filing, the claim must be denied. (See Claim of F. L. Smidth & Co., Claim No. CU-0104, 25 FCSC Semiann. Rep. 44 [July-Dec. 1966]; and Claim of Sigridur Einarsdottir, Claim No. CU-0728, id. at 45.)

Section 505 provides, as to Corporate Claims, as follows:

> (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. 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, or the Chinese Communist regime.
>
> (b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.
>
> (c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.
>
> (d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

As indicated by its heading, "Corporate Claims", Section 505 governs claims filed under Section 503(a) based on stock interests in corporations. In the absence of Section 505, no valid claim based on a stock interest could be filed under Section 503(a) because all property of a corporation belongs to the corporation, not its stockholders. Section 505, in effect, pierces the corporate veil and permits certain claims based on stock interests in corporations to be considered.

Claimant availed itself of the provisions of Section 505 when it filed Claim No. CU-3672, based on a stock interest in Cia. Antillana de Acero, S.A., a Cuban corporation. Since the asserted stock interest in this Cuban corporation was owned directly by claimant's predecessor in interest, claimant has filed its claim under Section 505(b) of the Act.

Claimant contends, in effect, that its claims satisfy the nationality requirements of Section 504(a) of the Act. With respect to Claim No. CU-3671, claimant states that on December 1, 1959 the claim arose in favor of AOF Co., a national of the United States within the meaning of Section 502(1)(B). Although the claim was owned by a Canadian corporation from January 20, 1960 to December 31, 1962, claimant states that the claim is valid because more than 50% of the outstanding capital stock of the Canadian corporation was owned by nationals of the United States. The same contention is urged with respect to Claim No. CU-3672 which was owned by the Canadian corporation on March 25, 1960, the date of loss.

Upon consideration of this entire matter, the Commission finds that it is constrained to reject claimant's contentions. Claimant has fallen into error by confusing the provisions of Section 504(a) with those of Section 505. As indicated above, Section 504(a) governs all claims under Section 503(a), whether or not based on stock interests in corporations.

When the test of Section 504(a) is applied to each owner of the claims herein, it is clear that there were breaks in the chains of United States nationality between the respective dates of loss and the date of filing. On January 20, 1960 when Claim No. CU-3671 was transferred to the Canadian corporation, the claim was not then owned by a national of the United States within the meaning of Section 502(1)(B) of the Act. The Canadian corporation was organized under the laws of Canada, not "under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico." The Commission therefore finds that the Canadian corporation does not qualify as a national of the United States within the meaning of Section 502(1)(B). (See Claim of Cia. Ganadera Becerra, S.A., Claim No. CU-0726, 25 FCSC Semiann. Rep. 47 [July-Dec. 1966].) The Commission further finds that insofar as Claim No. CU-3671 is concerned, any claim that arose on December 1, 1959 by virtue of the intervention in the Acetafil, S.A. contract, arose in favor of a national of the United States but passed into the

hands of a non-United States national. Similarly, with respect to Claim No. CU-3672 this was owned by the Canadian corporation on March 25, 1960, the date of loss.

The fact that more than 50% of the outstanding capital stock of the Canadian corporation was owned by nationals of the United States is immaterial because these claims were not filed by the stockholders of the Canadian corporation, but by its successor in interest. Since the Canadian corporation had assigned its claims to claimant herein on December 31, 1962, prior to the date of filing with the Commission, the stockholders of the Canadian corporation could no longer file valid claims under Section 503(a) of the Act. The Commission holds that Section 505 applies only when a claim is filed under Section 503(a) based on a stock interest in a corporation. Accordingly, the Commission finds that Section 505 is inapplicable to these claims.

The Commission finds that these claims were not owned by nationals of the United States continuously from the dates they arose until the date of filing with the Commission. Accordingly, these claims are denied. The Commission deems it unnecessary to consider other elements of these claims.

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

OCT 14 1970

Leo S. Garlock, Chairman

Theodore Jaffe, 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).)

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