

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

IN THE MATTER OF THE CLAIM OF

C. Y. CHEN, et al

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3309

Decision No. CU 4481

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$17,123.01, was presented by C. Y. CHEN on his own behalf and on behalf of nine other individuals. It is asserted that these ten claimants are stockholders of a foreign corporation which suffered a loss of property in Cuba. C. Y. CHEN, acting by virtue of powers of attorney, has stated that all of the claimants are nationals of the United States.

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.

According to statements of C. Y. CHEN, the vessel, SS Trinity Trader, involved in the asserted incidents giving rise to this claim, was owned by Penfield Corporation, a Liberian corporation. In turn all of the outstanding capital stock of Penfield Corporation was assertedly owned by another Liberian corporation, Oswego Corporation. It is asserted that the ten claimants are stockholders of the Oswego Corporation.

It appears from the record that the SS Trinity Trader had discharged its cargo at Nicaro, Cuba on January 1, 1959 when it was seized by Cuban troops. The vessel sustained some damage from machine gun fire. Subsequently, the vessel was diverted from its normal course, and Cuban authorities compelled the vessel to transport Cuban military personnel to Havana, where the vessel arrived on January 3, 1959. Shortly thereafter, the vessel was released to its rightful owners.

Claimants have asserted their claim as follows:

| | | |
|---|--|-------------|
| Average daily revenue lost, which vessel would have earned if no incident had occurred is - | \$2,303.65 | |
| Less brokerage - | <u>28.80</u> | |
| | \$2,274.85 | |
| Time lost from 0140 - January 1, 1959 (when vessel was ready to sail from Nicaro if this seizure had not occurred) to arrival loading port (Amuay) 1332 on January 10, 1959 - | | |
| | 9 days, 11 hours, 52 min. | |
| Less normal time from Nicaro to Amuay | <u>2 days, 12 hours, 52 min.</u> | |
| Extra Time Consumed | 6 days, 22 hours, 58 min. at \$2,274.85 | \$15,825.82 |
| Extraordinary expenses for transporting Cuban Government personnel from Nicaro to Havana: From 0443 on January 1, 1959 to 1200 on January 3, 1959 - 2 days, 7 hours, 17 min. 100 passengers at \$10.00 each per day - including meals | | 2,000.00 |

CU-3309

| | | |
|---|--------------|--------------------|
| Cable charges - January 1 to January 4, 1959 | | |
| From vessel | \$ 400.80 | |
| From Matralines | 408.38 | |
| Republic of Liberia | <u>28.56</u> | \$ 837.74 |
| Overtime paid to crew: | | |
| January 1, 1959 (Holiday) | \$ 60.55 | |
| January 1 to 8, 1959 | <u>39.85</u> | 100.40 |
| Telephone calls made by office personnel from home telephone: | | |
| W. J. Hawthorne - January 1 to 4, 1959 | \$ 8.91 | |
| Capt. J. Donovan - January 1 to 4, 1959 | <u>41.64</u> | 50.55 |
| Deck stores consumed by vessel - to paint rifle spots: | | |
| 10 Gal. white paint at \$3.51 Gal. | \$ 35.10 | |
| 10 Gal. hull black at 2.45 Gal. | 24.50 | |
| 10 Gal. red lead at 3.87 Gal. | <u>38.70</u> | 98.30 |
| Excess water consumed - | | |
| 150 tons at \$1.00 per ton | | 150.00 |
| Excess fuel consumed as per attached statement - | | |
| Total 993.5 bbls. | | |
| 676 bbls. at \$2.57 per bbl. | | 1,737.32 |
| 317.5 bbls. at \$2.10 per bbl. | | <u>666.75</u> |
| Total | | \$21,466.88 |
| Less amount recovered from insurance company | | <u>4,343.87</u> |
| Claimed amount | | <u>\$17,123.01</u> |

The record includes a detailed breakdown of the losses that were allowed by the insurance carrier pursuant to the war risk policy covering the vessel. It appears that the damage to the vessel and all of the out-of-pocket expenses engendered by the voyage to Havana were fully compensated by the insurance company. Accordingly, this claim is based upon the loss of income that the vessel would assertedly have earned had it not been diverted from its normal course.

Claimants were advised that Title V of the Act provides for certain claims against the Government of Cuba based upon the nationalization or other taking of property. It was noted that the claim appeared to be one for losses of future profits, and it was suggested that appropriate evidence

be submitted to establish that this claim falls within the purview of Title V of the Act. Mr. Chen's response of January 21, 1970, speaking on behalf of all claimants, was as follows:

You have requested certain other information with respect to the claim. At the present time, no funds have been appropriated by Congress for payment of any claims; therefore I suggest that we await such appropriation at which time we will resubmit our claim in full with all supporting data.

Despite claimants' comments, the Commission has carefully considered this claim on its merits.

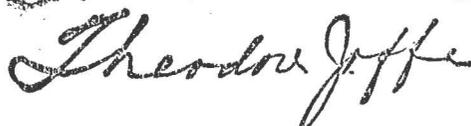
Since the vessel was returned after a short voyage to Havana, it cannot be considered that the vessel had been "taken" within the meaning of Title V of the Act. As noted above, the minor damages to the vessel and other expenses resulting from the voyage to Havana have been compensated in full by the insurance company. Pursuant to Section 506 of the Act, all amounts the claimants have received from any source on account of claimed losses must be deducted from any loss which might be certified. (See Claim of Richard S. Milk and Juliet C. Milk, Claim No. (U-0823, 1967 PGSC Ann. Rep. 63.)

Moreover, the Commission has held that a claim for the loss of potential profits is not a claim "resulting from the nationalization, expropriation, intervention or other taking of" property within the meaning of Title V of the Act. (See Claim of Ford Motor Company, Claim No. (U-3072; and Claim of Robert L. Shearney and Marjorie E. Shearney, Claim No. (U-0915.)

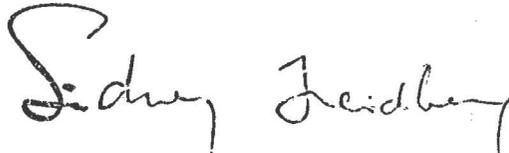
Upon consideration of the entire record, the Commission finds that claimants have failed to establish that they sustained losses of property within the meaning of Title V of the Act which have not already been compensated. For the foregoing reasons, this claim is denied in its entirety.

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

5 FEB 1970



Theodore Jaffe, Commissioner



Sidney Vroidberg, 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).)

CU-3309