

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

IN THE MATTER OF THE CLAIM OF

CONTINENTAL CAN COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0778

Decision No. CU 3792

Counsel for claimant:

Willkie Farr & Gallagher
By Jack David, 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 \$8,829,056.51, was presented by CONTINENTAL CAN COMPANY, INC., based upon asserted losses of real and personal property at its branch office in Havana, 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. 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 New York, that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States, and that as of December 31, 1967, 98.6% of claimant's outstanding capital stock was owned by nationals of the United States (see Claim of Continental-Shellmar, Inc., Claim No. CU-0773). The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It further appears from the evidence of record that claimant owned at all pertinent times a 100% stock interest in Continental Can Corporation, organized under the laws of Delaware. Accordingly, the Commission finds that Continental Can Corporation also qualifies as a national of the United States under Section 502(1)(B) of the Act.

The evidence includes copies of deeds, executed on August 7, 1945 and December 18, 1946, by which the Continental Can Corporation acquired, respectively, all of the assets and liabilities of a Cuban corporation, Sociedad Industrial de Cuba, and certain real property known as La Conchita farm, situated on Via Blanca Highway in the District of Havana. The Cuban corporation, which had been engaged in the manufacture, lithographing and sale of containers and metallic products, ceased to exist and claimant's subsidiary carried on the business as its Cuban branch,

not incorporated under the laws of Cuba. The evidence establishes that on July 12, 1960, the Continental Can Corporation dissolved and all its assets, including its Cuban branch, as well as its liabilities were transferred to claimant. Accordingly, the Commission finds that claimant acquired, inter alia, title to all of the Cuban assets of the Continental Can Company on July 12, 1960, upon the filing of a Certificate of Dissolution with the Delaware Department of State.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Continental Can Corporation. The Commission finds that all of claimant's Cuban properties, discussed below, were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

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:

Buildings and equipment		\$ 4,642,000.00
Land		884,976.54
Automobiles		5,990.00
Capital projects in progress		49,557.54
Cash		259,046.35
Receivables	\$1,354,155.18	
Less reserve for doubtful accounts	<u>32,080.74</u>	
Net Receivables		1,322,074.44
Inventories	2,255,303.00	
Less reserve for obsolete stock	<u>33,410.00</u>	
Net Inventories		2,221,893.00
Miscellaneous investments		6,900.00
Deposits-Letters of Credit		551,282.65
Deferred charges		<u>58,652.15</u>
Total Assets		\$10,002,372.67
Less Liabilities:		
Accounts payable	80,134.05	
Accrued compensation	104,067.43	
Accrued taxes	971,114.68	
Accrued discounts	<u>18,000.00</u>	
Total Liabilities		<u>1,173,316.16</u>
Amount claimed		<u>\$ 8,829,056.51</u>

The evidence includes a copy of the balance sheet for the Cuban branch as of July 11, 1960, affidavits from officials of claimant who had personal knowledge of the facts, and statements made by an official of claimant to the American Embassy, Havana, Cuba, in 1960.

Three items in the above balance sheet require comment, i.e., receivables, in the net amount of \$1,322,074.44, buildings and equipment, in the amount of \$4,642,000.00 and land in the amount of \$884,976.54.

Receivables

Claimant has indicated in response to Commission inquiries that 10% of the receivables (which appear in the July 11, 1960 balance sheet as \$1,322,074.44, net) were due from American concerns and were not secured by properties taken by Cuba. Pursuant to the provisions of Section 505(a) of the Act, a claim based upon a debt of an American concern may not be considered

unless the debt was a charge on properties taken by Cuba. Accordingly, the Commission finds that out of the net receivables, \$132,207.44 is not within the purview of Section 505(a) of the Act and therefore must be deducted.

Buildings, Equipment and Land

The asserted values of \$4,642,000.00 for buildings and equipment, and \$884,976.54 for land are based upon appraisals of Mr. Clark A. Valentiner, set forth in his affidavit of September 2, 1965. The record shows that Mr. Valentiner had been Vice President, General Manager and Director of Continental Can Corporation from its organization on May 21, 1945 until its dissolution on July 12, 1960. It further appears from the deed of August 7, 1945, pursuant to which the now dissolved subsidiary of claimant, Sociedad Industrial de Cuba, had acquired title to all the assets of the Cuban corporation and had assumed its liabilities, that Mr. Valentiner had then been Vice President of the Cuban corporation and had represented that corporation in concluding the sale to claimant's then subsidiary. Thus, Mr. Valentiner, who is no longer associated with claimant, had acquired considerable knowledge and expertise in property values in Cuba over a long period of time, and had direct personal knowledge of claimant's properties in Cuba.

It appears, however, from statements made by Mr. Valentiner to the Department of State in 1960 that the \$4,642,000.00 figure for the buildings and equipment were replacement values and not the usual book values which appear in many of these cases. Other evidence of record indicates that the buildings were constantly being replaced and rebuilt, and that additions had been made from time to time so that the buildings, in effect, were in as good condition as if they were new. It further appears from the record that the old machinery and equipment had been replaced with modernized units, and a number of automatic machines had been added. Furthermore,

the record shows that the branch had been enjoying substantial profits over the years. The record shows net profits for 1957, 1958, 1959 and part of 1960 in the respective amounts of \$819,021.73, \$807,625.22, \$871,689.26, and \$939,213.00.

Upon consideration of the entire record, including all of the foregoing, as well as photographs, maps, and descriptions of the buildings and equipment, the Commission finds that the valuation most appropriate to the properties and equitable to the claimant is the appraisal made by Mr. Valentiner, based upon many years of personal experience and direct contact with the properties. Accordingly, the Commission finds that the aggregate value of the buildings and equipment on October 24, 1960, the date of loss, was \$4,642,000.00.

With respect to the land, Mr. Valentiner has appraised the "Via Blanca" property at \$18.00 per square meter and the "La Fernanda" property at \$14.00 per square meter. He states that in December 1953 or January 1954 he received a written offer of \$600,00.00 for the "Via Blanca" property, equivalent to \$16.05 per square meter, but that he rejected the offer as inadequate. In his opinion, the "Via Blanca" land was more valuable than the "La Fernanda" land because it had better access to the main highway.

The Commission has considered the entire record, including the foregoing appraisals, as well as photographs, maps and descriptions of the two pieces of property and evidence concerning the value of comparable land parcels in Cuba. The Commission finds that the valuations most appropriate to the properties and equitable to the claimant are the appraisals made by Mr. Valentiner, based upon personal knowledge of the facts. The Commission finds that the "Via Blanca" and the "La Fernanda" properties had values on October 24, 1960 of \$18.00 and \$14.00 per square meter, respectively. Inasmuch as the two said properties had areas of 37,382.03 square meters and 15,150 square meters, respectively, the Commission finds that the values of the "Via Blanca" and "La Fernanda" properties were \$672,876.54 and \$212,100.00, respectively, or the aggregate amount of \$884,976.54.

Accordingly, the Commission concludes that the aggregate value of claimant's assets in Cuba on October 24, 1960, the date of loss, was \$9,870,165.23, an amount arrived at as follows, viz.: \$10,002,372.67 as stated in the balance sheet, less \$132,207.44, adjustment for unsecured receivables due from American debtors.

Claimant has reduced the value of its branch's assets by its branch's liabilities. The Commission consistently has not reduced the value of a corporate claimant's branch office assets by any of its liabilities in determinations under Title V of the Act, except for debts due the Republic of Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that claimant is or may still be liable for the debts of its branch office. Counsel for claimant has stated in a letter, dated June 22, 1969, that its branch office was indebted to Cuba for taxes in the amounts of \$552,797.00 and \$440,558.31, aggregating \$993,355.31, which conforms with amounts shown in the branch's balance sheet of July 11, 1960. The item, Accrued Taxes, appearing in the balance sheet of the branch as aggregating \$971,114.68, includes, counsel stated, F.I.C.A. taxes in the amount of \$7,759.37, which applied to American employees' salaries and could not be transferred to the United States due to Cuban restrictions on the export of monies. The latter F.I.C.A. taxes, therefore, did not constitute debts owing to Cuba.

The Commission, therefore, concludes that the loss sustained by claimant within the meaning of Title V of the Act was \$8,906,809.92.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

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 it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CONTINENTAL CAN COMPANY, 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 Eight Million Nine Hundred Six Thousand Eight Hundred Nine Dollars and Ninety-two Cents (\$8,906,809.92) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

30 JUL 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).)