

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

IN THE MATTER OF THE CLAIM OF

RALPH D. SANDERS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1375

Decision No. CU- 6119

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by RALPH D. SANDERS for \$49,694.73 based upon the loss of his ownership interest in a Cuban enterprise. Claimant RALPH D. SANDERS has been a national of the United States since birth.

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.

On the basis of the evidence of record, including copies of stock certificates and affidavits, the Commission finds that claimant, since prior to 1961, has been the owner of 3,535 preferred shares of Santa Catalina Terminal, S.A., a Cuban enterprise and 3,888.50 shares of common stock of the enterprise, a total of 52.5 per cent of the stock issued and outstanding on the date of loss.

On December 6, 1961, the Cuban Government published its Law 989 which effected confiscation of all assets, personal property and real estate, rights, shares, stock, bonds and securities of persons who left the country. The Commission finds that claimant's interests in Santa Catalina Terminal, S.A., were taken by the Government of Cuba on that date. The Commission further finds that as a result of said action claimant sustained a loss within the meaning of Title V of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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. This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record reflects that the enterprise was established to own, develop, lease, rent and operate a ship terminal or dock in Havana Bay on deep water near a railroad and highway. There had been warehouses and facilities for handling and docking ships but these were long ago destroyed by hurricane. The concrete sea walls had been rebuilt at a cost of \$54,000. The land owned by the corporation was near the town of Regla and measured 19,973 square meters. It has been asserted that the land and sea walls, because of location and highway and railroad connections, had a value of \$500,000. No substantial evidence has been submitted in support of this. Claimant has asserted claim for his original investment, which, apparently, was allowed by Internal Revenue Service.

Based on evidence available to the Commission as to the value of land at that location, the Commission finds that the land owned by the corporation had a value of \$14.60 per square meter and that thus the value of its assets, including the sea walls was \$345,605.80. However, there must be subtracted from this amount known debts in the amount of \$63,000. The net worth of the corporation is thus found as \$282,605.80 and claimant's 52.5 per cent interest had a value of \$148,368.04, there being no evidence of record that the preferred shares and common shares should participate other than equally.

Evidence of record establishes that the corporation was indebted to claimant in the amount of \$63,000. The Commission has held that debts of nationalized Cuban enterprises, owed to United States national claimants, constitute losses on the date of taking, within the meaning of Title V of the Act (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]).

Accordingly, the Commission finds that claimant suffered an additional loss of \$63,000 within the scope of the Act, or a total loss of \$211,368,04.

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 certifications of loss 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 in the instant case it is so ordered.

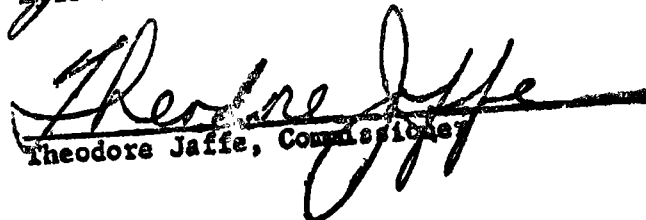
CERTIFICATION OF LOSS

The Commission certifies that RALPH D. SANDERS 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 Two Hundred Eleven Thousand Three Hundred Sixty-Eight Dollars and Four Cents (\$211,368.04) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

MAR 17 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 (1970).)