

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

IN THE MATTER OF THE CLAIM OF

JOSE R. GRUEIRA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1446
Claim No. CU-3968

Decision No. CU

2928

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 JOSE R. GRUEIRA in the total amount of \$21,025.00, based upon the asserted ownership and loss of a stock interest, personal property, a bank deposit and a debt owed. Claimant has been a national of the United States since his 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.

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) (Supp. 1967).)

The record contains provision stock certificate Nos. 2, 4, 8, 9, and 10 issued to the claimant on or before October 8, 1959 for 110 shares of capital stock in Servicio General De Motores Diesel S.A.

Servicio General De Motores Diesel S.A., was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1) (B) of the Act which defines the term "national of the United States" as including 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. Under these circumstances it has been held that a stockholder may maintain claim for his interest.

A sworn declaration by the claimant before an attorney and notary on November 17, 1965 indicates that the aforementioned enterprise was intervened and confiscated on December 5, 1962.

The Commission finds that Servicio General De Motores Diesel S.A. was taken by the Government of Cuba on December 5, 1962, pursuant to the provisions of Law 1076 (See Claim of Perkins Marine Lamp and Hardware Corp., Claim No. CU-0232, 1967 FCSC Ann. Rep. 42.)

The Commission concludes that as a result of the intervention by the Government of Cuba of Servicio General De Motores Diesel S.A., claimant suffered 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.

In determining the value of the interest owned by claimant in Servicio General De Motores Diesel S.A., the Commission has considered claimant's assertions, and a 1961 balance sheet for the company.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation. The June 30, 1961 balance sheet reflects the following:

Servicio General de Motores Diesel, S.A.

General Balance

June 30, 1961

Assets

Current Assets

Cash in safe and bank		\$ 8,876.29
Current accounts		4,837.46
Accounts to collect		3,676.15
Inventory	\$ 16,093.76	
Minus: Merchandise or consignment	<u>3,318.07</u>	<u>12,775.69</u>

Total Current Assets \$ 30,165.59

Fixed Assets

Supplies and Automobiles, etc.		\$ 9,231.50
Minus: reserve for depreciation		<u>2,155.78</u>

Total Fixed Assets \$ 7,075.72

Deferred Assets

Organization expenses	\$ 2,039.64	
Minus: reserve for redemption		
Organization expenses	<u>509.90</u>	\$ 1,529.74
Insurance paid in advance		14.89
Deposits		450.00
Funds for urban investment redemption		<u>3,600.00</u>

Total Deferred Assets \$ 5,594.63

Total Assets \$ 42,835.94

Liabilities and Capital

Current Liabilities

Suppliers		\$ 15,246.58
Expenses to pay		1,039.21
Taxes on utilities to pay		949.48
Taxes to pay		<u>47.26</u>

Total Current Liabilities \$ 17,282.53

Capital

Capital in shares		\$ 100,000.00
Minus: shares not issued		<u>85,800.00</u>

Capital in circulation \$ 14,200.00

Surplus

from previous years	\$ 2,037.21	
profit of the period	<u>9,316.20</u>	<u>11,353.41</u>
<u>Total Liquid Capital</u>		<u>\$ 25,553.41</u>

Total Liabilities and Capital \$ 42,835.94

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity or the net worth of the Company. The record indicates that Servicio General De Motores Diesel S.A. had 220 shares outstanding at the time of loss.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission finds that the value of the Company is as follows:

Assets	\$42,835.94
Liabilities	<u>17,282.53</u>
Net Worth	\$25,553.41

The Commission therefore finds that a net book value of \$25,553.41 was available for distribution at the time of loss, among the 220 shares of capital stock issued by Servicio General De Motores Diesel S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Servicio General De Motores Diesel S.A. was approximately \$117,061 per share of the capital stock issued and held at the time of loss.

Accordingly, in the instant claim, the Commission finds that claimant, JOSE R. GRUEIRA, as holder of 110 shares of capital stock, suffered a loss in the amount of \$12,876.71 within the meaning of Title V of the Act, as a result of the intervention of Servicio General De Motores Diesel S.A. by the Government of Cuba on December 5, 1962.

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.)

The Commission therefore concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 5, 1962, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

With respect to the portion of the claim that is based upon personal property, a debt owed to claimant and a bank deposit, the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

CERTIFICATION OF LOSS

The Commission certifies that JOSE R. GRUEIRA sustained 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 Twelve Thousand Eight Hundred Seventy-Six Dollars and Seventy-One Cents (\$12,876.71) with interest thereon at 6% per annum from December 5, 1962 to the date of settlement.

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).)

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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 for 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.