

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

IN THE MATTER OF THE CLAIM OF

THE PENINSULAR & OCCIDENTAL  
STEAMSHIP COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2218

Decision No. CU 3579

Counsel for claimant:

Scott McCarthy Steel Hector & Davis  
By William C. Steel, 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 amended amount of \$62,552.67, was presented by THE PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY, based upon asserted losses in connection with a contract with the Government of 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.

Claimant corporation, by an authorized official, has certified that it was organized under the laws of Connecticut and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. Another official has certified that as of April 24, 1967, 100% of claimant's 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 record contains a copy of an agreement duly executed in Havana, Cuba, effective July 1, 1956, between claimant and the Government of Cuba. The agreement provided that claimant would transport mail from Havana to Miami, Florida and there deliver it to the postal authorities. Other provisions related to use of the SS Florida for such surface transportation, the payment by Cuba of \$.50 for each sack of mail thus delivered, the rendering of bills and accounts, and related provisions. The contract was to terminate on June 30, 1957, and was to be deemed extended from month to month if the services were continued by claimant. An agent in Cuba was designated by claimant to deal with the Government of Cuba on claimant's behalf.

Claimant rendered service to the Government of Cuba until approximately November 1, 1957, when it terminated its voyages. The evidence includes copies of bills claimant's agent submitted to the Government of Cuba, covering the months, December 1956 through October 1957. Each bill itemizes the number of sacks of mail transported by claimant, the gross charges therefor pursuant to the terms of the agreement, the fees and expenses incurred by

claimant in connection therewith, and the net amount due for each of those months. The record establishes that the aggregate net amount due claimant from the Government of Cuba on account of said services was 62,552.67 pesos, as follows:

<u>Date</u>	<u>Gross Amount</u>	<u>Deductions</u>	<u>Net Amount</u>
December 1956	6,551.00	458.57	6,092.43
January 1957	6,980.00	488.60	6,491.40
February 1957	5,978.00	418.46	5,559.54
March 1957	5,380.00	376.60	5,003.40
April 1957	6,484.50	453.93	6,030.57
May 1957	4,610.00	322.70	4,287.30
June 1957	4,701.50	329.12	4,372.38
July 1957	7,019.50	491.38	6,528.12
August 1957	6,987.50	489.14	6,498.36
September 1957	4,166.00	391.62	3,874.38
October 1957	<u>8,403.00</u>	<u>588.21</u>	<u>7,814.79</u>
Totals	<u>67,261.00</u>	<u>4,708.33</u>	<u>62,552.67</u>

It is noted that the Cuban peso was on a par with the United States dollar.

Thereafter, claimant's agent arranged to discuss payment of the debt with officials of the Cuban Government. Each time the officials acknowledged the debt, but indicated it would have to be presented and approved in the next budget. The record establishes that the Government of Cuba did not refuse to pay its debt to claimant and continued to acknowledge its obligations as late as 1959. The record includes numerous communications between claimant and its agent as well as between the agent and officials of the Cuban Government. It appears that in November 1959, officials of the Government of Cuba were still acknowledging the debt and promising

favorable action. In a letter, dated December 14, 1959, from claimant's agent in Cuba to an officer of claimant in Florida, the agent again stated that a Cuban Government official was considering the debt in connection with the preparation of a new budget. A letter from claimant's agent, dated January 22, 1969, to counsel for claimant indicates that the Government of Cuba completely ignored its debt to claimant after December 14, 1959 and apparently refused even to discuss it further.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the Government of Cuba failed and refused to honor an existing valid obligation to claimant on December 15, 1959. The Commission therefore concludes that claimant sustained a loss within the meaning of Title V of the Act on December 15, 1959 in the aggregate amount of \$62,552.67, representing the unpaid indebtedness of the Government of Cuba. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

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 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 THE PENINSULAR & OCCIDENTAL STEAMSHIP COMPANY 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 Sixty-two Thousand Five Hundred Fifty-two Dollars and Sixty-seven Cents (\$62,552.67), with interest thereon at 6% per annum from December 15, 1959 to the date of settlement.

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

MAR 26 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).)