

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

IN THE MATTER OF THE CLAIM OF

MACOMBER INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2447

Decision No. CU 4578

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 \$23,580.00, was presented by MACOMBER INCORPORATED, based upon the asserted loss of stock interests in a Cuban corporation.

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 Ohio and that at all pertinent times all of the claimant's outstanding capital stock was owned by a national or nationals of the United States, including Sharon Steel Corporation of Pennsylvania, 94.94% of whose stock is owned by United States nationals. It further appears that Macomber Panamericana, which owned some of the shares of stock involved in this claim, was organized under the laws of Ohio, and that at all pertinent times all of its outstanding capital stock was owned by claimant. The Commission holds that claimant and its subsidiary, Macomber Panamericana, qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes that Macomber Panamericana was dissolved on December 31, 1962 and merged with claimant.

The claim is based on losses resulting from the asserted confiscation by the Government of Cuba of the assets of Compania de Estructuras Macomber Cubana, S.A.

Based upon the evidence of record, including copies of stock certificates, copies of cancelled checks evidencing the purchase of the shares of stock in question, and extracts from the books and records of Macomber Panamericana, the Commission finds that claimant and its subsidiary owned in the aggregate of 2,358 shares of stock in Compania de Estructuras Macomber Cubana, S.A., a Cuban entity.

CU-2447

Since Compania de Estructuras Macomber Cubana, S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" as defined under Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record includes a letter, dated December 26, 1967, from one of claimant's officers stating that the shares of stock in the Cuban entity were considered worthless on December 31, 1960 as a result of intervention by the Government of Cuba prior to that date. Claimant has asserted that the date of loss was December 31, 1960. The evidence also includes a copy of a letter, dated November 16, 1962, from claimant to its accountants in which it refers to the loss of a plant in Havana, Cuba, owned by the Cuban entity, which was manufacturing claimant's products, and to the loss of everything including cash as a result of Castro's actions. Extracts from the books of Macomber Panamericana disclose that its investment in the Cuban entity was written off as of December 31, 1960. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the Cuban entity was taken by the Government of Cuba on December 31, 1960, as a result of which claimant and Macomber Panamericana sustained losses 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.

CU-2447

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.

It appears from the record that no balance sheets or other financial statements for the Cuban entity are available, the records apparently having been left in Cuba. According to claimant's statements, including its letter of November 16, 1962 to its accountants, the Cuban entity owned certain assets in Cuba, including a manufacturing plant and cash. However, the record fails to disclose either the aggregate value of the Cuban entity's assets or the extent of its liabilities. As noted above, claimant has submitted copies of cancelled checks covering the purchases of the shares of stock between May 28, 1957 and January 4, 1960. Those checks indicate that as late as January 4, 1960, the purchase price of the stock was \$10.00 per share.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the purchase price of the shares of stock as shown by the cancelled checks. Accordingly, the Commission finds that the value of one share of stock in Compania de Estructuras Macomber Cubana, S.A. on December 31, 1960, the date of loss, was \$10.00. Therefore, the aggregate value of the 2,358 shares of stock was \$23,580.00.

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 in the instant case it is so ordered.

CU-2447

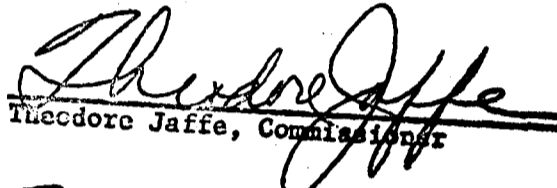
CERTIFICATION OF LOSS


The Commission certifies that MACOMBER INCORPORATED succeeded to and 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 Twenty-Three Thousand Five Hundred Eighty Dollars (\$23,580.00) with interest at 6% per annum from December 31, 1960 to the date of settlement.

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

MAR 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)