

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

IN THE MATTER OF THE CLAIM OF

DRAGOR SHIPPING CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2499

Decision No. CU 5905

Counsel for claimant:

Joseph Lotterman, 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 \$3,729,593.76, was presented by DRAGOR SHIPPING CORPORATION based upon the asserted loss of debts owed by Cuban enterprises, a leasehold interest in real property in Havana, Cuba, unpaid rents, advance payments for repairs and insurance of the leased property.

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.

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 the State of Delaware as Ward Industries Corporation and that the name was changed on August 14, 1964 to DRAGOR SHIPPING CORPORATION. An officer of the claimant has certified that at all times pertinent hereto more than 50% of the outstanding capital has been owned by persons who were nationals of the United States and that on August 7, 1967 more than 99% of the outstanding voting stock was held by persons or corporations who were presumed to be United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for the following losses:

<u>Debts</u>	
Notes of Ward Garcia, S.A. dated 1/31/59	\$ 113,350.00
Interest on notes at 4-1/2% from 1/31/59	42,081.87
Rent Receivable	229,166.71
Cash Advances for repairs to Terminal	94,100.48
Insurance Premiums advanced	894.70
<u>Lease Rentals</u> from October, 1960 to December, 1984, end of lease	<u>3,250,000.00</u>
	\$3,729,593.76

Debts

The record reflects that claimant was owed \$113,350.00 plus interest by Ward Garcia, S.A., a Cuban enterprise represented by notes bearing

4-1/2% interest per annum, dated January 31, 1959 which were held by the Chase Manhattan Bank of Havana, Cuba. The record further reflects that claimant was owed the sum of \$229,166.71 by Terminal de la Ward Line, S.A., a Cuban corporation which occupied the Havana property leased by claimant from The University of Chicago. Ward Garcia, S.A. and Terminal de la Ward Line, S.A. were intervened by the Government of Cuba on April 27, 1961 under Resolution No. 2390.

The Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization 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 a loss on April 27, 1961 of \$113,350.00 for unpaid notes plus interest to the date of intervention of \$11,420.04, and unpaid rent of \$229,166.71 making a total loss of \$353,936.75 for debts due from intervened Cuban enterprises.

Claim has been made also for \$94,100.48 for advances made by claimant for repairs to the Havana terminal property and for \$894.70 for advanced insurance premiums. No evidence has been submitted to establish to whom such payments were made or for whose benefit. Under the original lease contract, claimant was to make repairs and, if the cost did not exceed \$100,000.00, the cost was to be withheld from the annual rent. Inasmuch as claimant has not established the loss of this part of the claim as resulting from the nationalization, expropriation, intervention or other taking of property by the Government of Cuba, claim therefor must be denied.

Lease Rentals

Loss is asserted for \$3,250,000.00 for rentals due on leased property from October, 1960 to December, 1984. According to the record, claimant leased an Administrative Concession with land, docks and warehouses in Havana, Cuba from The University of Chicago with an advance payment of \$450,000.00 and an annual payment of \$200,000.00 per year for the

first fifteen years and \$100,000.00 per year for the last fourteen years. Claimant thereafter subleased the same property at the same terms and in the sublease dated July 2, 1956 acknowledged receipt of the \$450,000.00 advance rental payment from the sublessee.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, the Urban Reform Law. Under this law the renting of properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2) and contracts for the renting of said properties were declared null and void (Article 5). The law covered residential, commercial, industrial and business office properties (Article 15). Accordingly, the Commission finds that the leased premises were taken by the Government of Cuba on October 14, 1960 at which time claimant was not in possession of the leased property, it being occupied and operated by Terminal de la Ward, S.A., a Cuban corporation.

With respect to the rent assertedly due claimant after October 14, 1960, it is to be noted that the property belonged to the Government of Cuba and the lease and sublease were no longer in effect. Accordingly, the claim for rent must be and hereby is denied.

Claimant contends that it lost a leasehold interest. However, the record shows that claimant did not occupy the leased premises and that the rent to be paid claimant was the same amount to be paid by claimant in turn to the property owner. The enterprise occupying the leased property had a leasehold interest but being a Cuban enterprise could not assert a claim for such before this Commission.

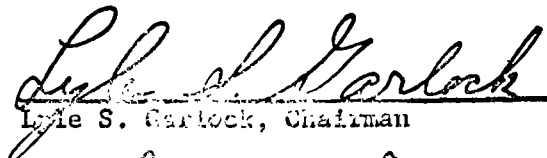
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

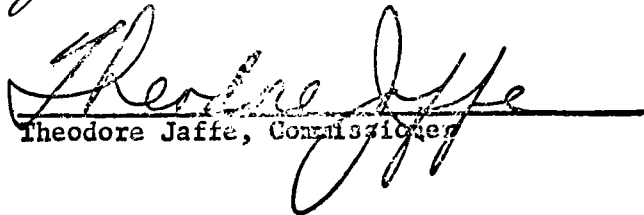
CERTIFICATION OF LOSS

The Commission certifies that DRAGOR SHIPPING CORPORATION 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 Three Hundred Fifty-Three Thousand Nine Hundred Thirty-Six Dollars and Seventy-Five Cents (\$353,936.75) with interest at 6% per annum from April 27, 1961 to the date of settlement.

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

OCT 14 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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).)