

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

IN THE MATTER OF THE CLAIM OF

SuCREST CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2664

Decision No. CU 3873

Counsel for claimant:

Stroock & Stroock & Lavan
By Lewis G. Cole, 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 \$75,000.00, was presented by SuCREST CORPORATION, based upon the asserted loss of molasses and sugar syrup terminal facilities in 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.

The record shows that claimant was organized under the laws of New York and that at all pertinent times more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States. An authorized officer of claimant has certified that on the date of loss and on the date of filing with the Commission less than .1 of 1% of claimant's outstanding common stock was held by persons residing outside 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 establishes and the Commission finds that claimant owned molasses and sugar syrup terminal facilities used for the loading and discharging of ocean going vessels, consisting of three steel storage tanks having a capacity of approximately 300,000 gallons, pump house, pump, filtering equipment, piping, railroad siding and miscellaneous equipment located on the Havana Central Dock, Havana, Cuba.

The record shows that claimant's representative in Cuba fled the country on May 5, 1961. Prior to that date, the Cuban Government had taken over the Havana Central Dock from its operator and made it clear that it considered claimant's tanks to be government property. By May 5, 1961, claimant's storage tanks were empty and operation of its facilities was no longer possible. The Commission finds that claimant's properties in Cuba were nationalized on May 5, 1961, as a result of which claimant sustained 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". 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 includes evidence in the nature of an extract from certified statements of claimant, reflecting the acquisition of the properties in question during the year ended June 30, 1931, by a former subsidiary, liquidated many years ago, as well as a copy of a depreciation schedule of the tanks and equipment. The steel storage tanks, pump house, pump, piping and equipment were purchased in 1930 and additions were made from 1930 through 1952, the total expenditure being \$53,224.44. Claimant states these facilities were acquired during the depression at prices substantially less than replacement cost or fair market value in 1961.

Claimant estimates the replacement cost of these facilities as approximately \$75,000.00 based on estimated replacement cost and on estimated sale value of the facilities which would, it is said, exceed

their original cost, partly because the terminal was located in a deep water anchorage in Havana Harbor and such locations being in short supply, commanded premium prices. In support of this evaluation there has been submitted the affidavit of J. Eugene Salomon, an Assistant Vice President of claimant corporation, and former Assistant Plant Superintendent and later Superintendent of Central Providencia, the sugar mill which provided edible molasses which claimant stored and shipped from its facilities at the Paula Dock in Havana Harbor. Based upon his familiarity with the sugar business in general, and in particular with the problems involved in shipping, storage, loading and unloading of molasses, and with such facilities, he states it as his opinion that the cost of replacing the claimant's facilities in Havana in 1961 would have been approximately \$75,000.00, assuming the replacement would be accomplished by construction of a single tank of a capacity equal to the aggregate capacity of the three tanks which claimant formerly owned, as this would be less expensive.

The Commission has considered all of the evidence of record, as well as evidence in other claims involving similar properties, in which were submitted appraisals by qualified appraisal firms. The Commission finds that on the date of loss, May 5, 1961, the fair market value of claimant's property was \$54,750.00, and concludes that it suffered a loss in that amount within the scope of Title V of the Act.

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.

CERTIFICATION OF LOSS

The Commission certifies that SuCREST CORPORATION 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 Fifty-four Thousand Seven Hundred Fifty Dollars (\$54,750.00) with interest thereon at 6% per annum from May 5, 1961 to the date of settlement.

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

SEP 11 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).)