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

IN THE MATTER OF THE CLAIM OF

FREDERICK SNARE CORPORATION
and
FREDERICK SNARE OVERSEAS CORPORATION

Claim No.CU-2035

Decision No.CU 3602

Under the International Claims Settlement
Act of 1949, as amended

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 $1,972,487.26, was presented by FREDERICK SNARE CORPORATION, based upon asserted losses in connection with its branch office in Havana, Cuba and two wholly-owned subsidiaries, FREDERICK SNARE OVERSEAS CORPORATION and Constructora Snare, S.A.

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 FREDERICK SNARE CORPORATION, hereafter referred to as the parent, was organized under the laws of New York, and owned all of the outstanding capital stock of FREDERICK SNARE OVERSEAS CORPORATION, hereafter referred to as OVERSEAS, which was organized under the laws of Delaware, as well as all of the outstanding capital stock of Constructora Snare, S.A., hereafter referred to as the Cuban subsidiary, which was organized under the laws of Cuba. An authorized officer of the parent has certified that more than 50% of the parent's outstanding capital stock was owned by nationals of the United States at all pertinent times, and that as of August 10, 1967, 1.63% of the parent's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that the parent and OVERSEAS are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides, *inter alia*, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered. Since the parent's claim is based in part upon its 100% ownership interest in OVERSEAS, a national of the United States, that part of its claim is denied. (See *Claim of Mary S. Sonnenberg*, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 (July-Dec. 1966).) OVERSEAS, however, has been added as party claimant with respect to that part of the original claim.

The Commission finds on the basis of the evidence of record that the parent owned a branch office and a Cuban subsidiary; that OVERSEAS owned a branch office in Cuba; and that claimants owned at said branches and Cuban subsidiary various items of personal property, discussed in detail below, which were used in construction work in Cuba.

The record shows and the Commission finds that the branch offices of the parent and OVERSEAS, as well as the Cuban subsidiary owned by the parent, were all intervened on October 7, 1960 by Resolution 21632 of the Cuban Ministry of Labor, issued pursuant to Law 647 of November 24, 1959. The Commission, therefore, concludes that the parent and OVERSEAS sustained losses of property on October 7, 1960, except as noted below, 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.

The evidence includes copies of the general ledger trial balance sheets for the branch office of the parent as of August 31, 1960, for the branch office of OVERSEAS as of May 31, 1960, and a copy of the trial balance sheet of the Cuban subsidiary as of December 31, 1959, which were the latest statements received by the parent from Cuba; balance sheets as of December 31, 1960 and supporting schedules for the parent and OVERSEAS, showing, inter alia, their respective properties in Cuba, including the Cuban subsidiary; copies of invoices, evidencing the purchase of some of the machinery and equipment involved in the parent's claim; statements from employees and officials showing the dates of acquisition of some of the other items of machinery and equipment for which claim was made; copies of pertinent parts of the parent's consolidated Federal tax return for 1960; copies of extracts from the parent's books and records relating to this claim; as well as detailed appraisals for all of the machinery and equipment maintained at the two branch offices and the Cuban subsidiary, supported by detailed schedules and current invoices showing replacement costs for new machinery and equipment. The appraisals, prepared by an expert who had personal knowledge of the facts on the basis of his position as Manager of the parent's operations in Cuba, indicate that appropriate reductions were made for depreciation to arrive at values on the date of loss.

On the basis of the foregoing, claimants have computed their claim as follows as of October 7, 1960 (it is noted that the Cuban peso was on a par with the United States dollar):

Constructora Snare, S.A. (Cuban Subsidiary)

Assets

One 180' Steel Boom	$ 250.00
One 40' Steel A-Frame	500.00
One 3 Drum Hoist	500.00
One 2 Drum Hoist	250.00
One 70 H.P. Boiler	250.00
One 4" Duplex Pump	250.00
One 1" Duplex Pump Boiler Feed	50.00
Launch "Amelia"	2,000.00
Boat Queen Mary	260.00
Derrick Boat F.S.C. #41	40,000.00
Total	$ 44,322.00

Parent's Branch Office

Assets

Cash in Banks	$ 286,359.43
Petty Cash Fund	1,000.00
Accounts Receivable	208,023.46
Deposits	2,810.39
Securities	87,360.00
Prepaid and Deferred Charges	3,327.27
Improvements to leaseholds	14,232.49
Construction equipment	1,071,486.00
Furniture & Fixtures	47,048.22
Materials	13,613.71
Steel Sheet Piling	4,508.00
Total Assets	$1,739,768.97

Liabilities

Accounts Payable	$ 2,631.96
Compulsory Vacations Payable	9,388.79
Unclaimed Wages	2,205.99
Income Taxes Payable - Withheld from Employees	2,059.04
Taxes Payable - Withheld from Subcontractors	1,311.42
Social Benefits Taxes Payable	584.13
Total Liabilities	$ 18,181.33
Net Worth	$1,721,587.64

Consequently, the parent's claim is in the aggregate amount of $1,765,909.64.

OVERSEAS Branch Office

Assets

Cash in Banks	$128,778.02	
Accounts Receivable	78,865.35	
Organization Expenses	1,307.97	
Total Assets		$208,951.34

Liabilities

Accounts Payable	265.52	
Compulsory Vacations Payable	709.92	
Unclaimed Wages	1,398.28	
Total Liabilities		2,373.72
Net Worth		$206,507.62

The foregoing amount, $206,507.62, therefore, represents the amount claimed by OVERSEAS.

Upon careful consideration of the entire record, the Commission finds that the valuation most appropriate to the machinery and equipment and equitable to the claimant is that shown in the expert appraisals with certain adjustments discussed below in detail together with the valuations for the other items involved in this claim.

It is noted that apart from the Cuban subsidiary, the parent and OVERSEAS merely carried on their construction business through branch offices. Thus with respect to these two branch offices, we are not dealing with the nationalization of Cuban corporations, in which case all liabilities thereof would have to be considered. Accordingly, the Commission consistently has not reduced the value of a corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for taxes owing to the Republic of Cuba which the Commission concluded was appropriate on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

For the foregoing reasons, the Commission finds no valid ground for reducing the values of the assets of either of the branch offices by any liabilities except for taxes payable to Cuba. On the other hand, the value or net worth of the Cuban subsidiary must include consideration of all its liabilities on the date of loss, because it was a Cuban corporation.

Valuation of the Cuban Subsidiary

A copy of the Cuban subsidiary's balance sheet as of December 31, 1959 was included in a statement of August 17, 1967 by an authorized officer of the parent, who stated in his letter of August 9, 1968 that it was the latest statement received from Cuba. That balance sheet shows the following:

Assets

Construction Equipment	$19,195.52	
Less depreciation	5,017.82	
Net Construction Equipment		$14,177.70
FREDERICK SNARE CORPORATION (Account Receivable)		12,495.17
Deferred Charges		7.38
Total Assets		$26,680.25

Liabilities and Capital

Dividend Tax Payable	$ 346.33
Capital Stock - Common	25,000.00
Surplus	1,333.92
	$26,680.25

As stated above, the Commission found that the appraisals of the machinery and equipment best reflected the values thereof on the date of loss. It is noted that the parent has eliminated from the assets of the Cuban subsidiary the account receivable which it owed its Cuban subsidiary in the amount of $12,495.17. It has also excluded deferred charges (prepaid expenses) in the amount of $7.38, apparently because it was deemed to have been used up as of the date of loss which was more than 9 months later than the date of the balance sheet. The Commission finds the elimination of the debt the parent owed its Cuban subsidiary a proper deduction and agrees that the deferred charges in the negligible amount of $7.38 should likewise be eliminated. On the other hand, however, the Commission finds that the Cuban subsidiary's liability in the amount of $346.33, for taxes payable to Cuba, the only liability of the Cuban subsidiary, should be deducted in the absence of evidence that it was paid to Cuba. (See Simmons claim, supra.)

Accordingly, the Commission finds that the value or net worth of the Cuban subsidiary on the date of loss was as follows:

Assets	
Construction Equipment (appraised value)	$44,322.00
Liabilities	
Dividend Tax Payable	346.33
Net Worth	$43,975.67

Valuation of the Parent's Branch Office

The evidence establishes that the asset, Cash in Banks, was shown in the bank statements of August 31, 1960 as $301,509.25. The parent's records, however, disclose transactions and adjustments between September 1, 1960 and October 6, 1960, so that the cash in the bank as of October 7, 1960 was reduced to $286,359.43. The Commission, therefore, finds that on October 7, 1960, the date of loss, the balance of the bank deposits in favor of the branch was $286,359.43.

The Commission finds that on October 7, 1960, the date of loss, the amount of cash on hand at the branch office was $1,000.00, as evidenced by the record.

With respect to the schedule of accounts receivable of the branch office in the amount of $208,023.46, the record shows that some of the debtors were American nationals. Pursuant to Section 505(a) of the Act, debts due from American concerns may not be allowed unless they constituted charges on property nationalized, expropriated, intervened, or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) The Commission finds, in the absence of evidence to the contrary, that the following debts due the branch office from American concerns or the United States Government were not charges upon property within the meaning of Section 505(a) of the Act and, accordingly, must be deducted in determining the amount of the branch's accounts receivable on October 7, 1960:

Compania Cubana de Electricidad (Cuban Electric Company)	$ 8,961.67
DuPont Interamerica Chemical Co.	1,120.71
Freeport Sulphur Co.	3,952.86
General Services Administration (United States Government)	896.80
University of Chicago	2,133.26
Merritt-Chapman & Scott Co.	474.09
Total debts of Americans	$17,539.39

The Commission, therefore, finds that on October 7, 1960, the date of loss, the aggregate amount of accounts receivable owned by the branch, which constituted a loss within the meaning of Title V of the Act, was $190,484.07.

With respect to the schedule of deposits of the branch office, the Commission finds that the amount of $60.00 constituted an unsecured debt of the Cuban Electric Company, which must be deducted for the reasons stated in connection with the accounts receivable. (See Anaconda claim, supra.) Accordingly, the Commission finds that on October 7, 1960, the branch office owned deposits in the amount of $2,730.39.

On the basis of the evidence of record, the Commission finds that on October 7, 1960, the date of loss, the aggregate values of the branch office's deferred charges, furniture and fixtures, materials, and steel sheet piling were the amounts of $3,327.27, $47,048.22, $13,613.71, and $4,508.00, respectively.

The Commission finds that the item, Improvements to Leaseholds, constituted investments which enhanced the value of the branch's business in Cuba. Accordingly, the Commission finds that on October 7, 1960, the value of the improvements to leaseholds was $14,232.49.

As stated above, the Commission has found that the value of the construction equipment at the branch office should be measured by the expert appraisals. The Commission, therefore, finds that the aggregate value of such construction equipment on October 7, 1960 was $1,071,486.00.

The only other remaining asset of the branch office was securities for which the amount of $87,360.00 is being claimed. The record shows that these securities included $25,900.00 for 5% First Mortgage Bonds of the Cuban Electric Company, due 1980; $2,500.00 for 5% First Mortgage Bonds of the Cuban Electric Company, due 1987; $1,960.00 for 5% Republic of Cuba Internal Debt Bonds of 1905, for which the face amount was $2,000.00; $50,000.00 for 4-1/2% Cuban Government Bonds of the Tunnel of Havana, due 1980; $5,000.00 for 50 shares of stock of Financiera Nacional de Cuba with a face value of $100.00 for each share; $1,000.00 for a bond of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983; and $1,000.00 for the par value of one share of stock of Compania Inmobiliaria La Torre, a Cuban corporation.

This is the first claim involving 5% Mortgage Bonds of the Cuban Electric Company. The Commission notes that other claims have been filed by other holders of such bonds; thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that on August 6, 1960, the date of loss, the aggregate value of the 5% Mortgage Bonds of the Cuban Electric Company was $28,400.00, the face amount of the bonds.

With respect to the Republic of Cuba 5% Internal Debt Bonds of 1905, and the 4-1/2% Cuban Government Bonds of the Tunnel of Havana, the Commission finds, in the absence of evidence to the contrary, that on October 7, 1960, the Government of Cuba was indebted to the parent's branch in the amounts of $2,000.00 and $50,000.00, respectively.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba; and that Cuba had guaranteed the investments of stockholders of this entity. The Commission further found that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated; that all of its liabilities were assumed by the Government of Cuba; and that a claim for such loss arose on August 17, 1960, the date of liquidation, within the meaning of Title V of the Act. (See Claim of Phoenix Insurance Comapny, Claim No. CU-1913.) The Commission finds that on August 17, 1960, the amount of the unpaid indebtedness of the Government of Cuba with respect to the said 50 shares of stock of Financiera Nacional de Cuba was $5,000.00.

The Commission has found, with respect to the $1,000.00 bond of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, that the Government of Cuba first defaulted on the payment of interest on May 1, 1961, Cuba having paid the interest due as of November 1, 1960. (See Claim of Westchester Fire Insurance Company, Claim No. CU-1703.) Consequently, the Commission finds that on October 7, 1960, the date of loss, the Government of Cuba was indebted to the parent's branch in the amount of $1,000.00.

It has been noted above that since this was a branch office and not a legal entity in Cuba, no deductions would be made for any of the branch's liabilities except for taxes due the Government of Cuba. The records of the parent disclose that as of October 7, 1960, the branch was indebted to Cuba for taxes in the aggregate amount of $3,954.59. Accordingly, the Commission concludes that the losses sustained at the branch office should be reduced to that extent.

The losses sustained by the parent may be summarized as follows:

Item	Date of Loss	Amount
Subsidiary	October 7, 1960	$ 43,975.67
Branch Office:		
Cash in banks	October 7, 1960	286,359.43
Cash on hand	October 7, 1960	1,000.00
Accounts receivable	October 7, 1960	190,484.07
Deposits	October 7, 1960	2,750.39
Deferred charges	October 7, 1960	3,327.27
Furniture and fixtures	October 7, 1960	47,048.22
Materials	October 7, 1960	13,613.71
Steel sheet piling	October 7, 1960	4,508.00
Improvements to leaseholds	October 7, 1960	14,232.49
Construction equipment	October 7, 1960	1,071,486.00
Mortgage bonds of Cuban Electric Company	August 6, 1960	28,400.00
Cuban Government 5% Internal Debt Bonds of 1905	October 7, 1960	2,000.00
Cuban Government 4-1/2% Bonds of the Tunnel of Havana	October 7, 1960	50,000.00
Financiera Nacional de Cuba	August 17, 1960	5,000.00
Cuban Government 4% Veterans, Courts and Public Works Bonds, 1953-1983	October 7, 1960	1,000.00
One share of stock of Compania Inmobiliaria La Torre	October 7, 1960	1,000.00
Total losses of parent		$1,766,185.25
Less taxes payable to Cuba		3,954.59
Net loss of the parent		$1,762,230.66

Valuation of OVERSEAS' Branch Office

The evidence establishes that the asset, Cash in Banks, was shown in the bank statements of May 31, 1960 as $153,538.07. The records of OVERSEAS, however, disclose transactions and adjustments between June 1, 1960 and October 7, 1960, so that the cash in the bank as of

October 7, 1960 was $128,778.02. The Commission, therefore, finds that on October 7, 1960, the date of loss, the balance of the bank deposits in favor of the branch was $128,778.02.

The record shows that all of the accounts receivable of the branch office of OVERSEAS were due from Moa Bay Mining Company, a national of the United States within the meaning of Section 502(1)(B) of the Act, as stated by an authorized officer of the parent in an affidavit, dated August 9, 1968. It does not appear from the evidence of record that this debt was a charge on property taken by Cuba within the meaning of Section 505(a) of the Act. For the reasons stated with respect to the accounts receivable and deposits of the parent's branch office, this portion of the claim in the amount of $78,865.35 must be and hereby is denied. (See <u>Anaconda</u> claim, <u>supra</u>.)

The Commission finds that the item, Organization Expenses, constituted investments which enhanced the branch's business in Cuba. Accordingly, the Commission finds that on October 7, 1960, the date of loss, this item was an asset, having a value of $1,307.97.

Inasmuch as it does not appear from the evidence of record that the branch office owed any debt to Cuba, no deductions are being made for the liabilities of the branch, as in the case of the parent's branch office.

The Commission, therefore, finds that the value of the branch office of OVERSEAS on October 7, 1960, the date of loss, was $130,085.99.

The Commission has decided that in certification 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 respective dates of loss to the date of settlement (see <u>Claim of Lisle Corporation</u>, Claim No. CU-0644), and in the instant case it is so ordered as follows:

FREDERICK SNARE CORPORATION

From	On
August 6, 1960	$ 28,400.00
August 17, 1960	5,000.00
October 7, 1960	1,728,830.66
	$1,762,230.66

FREDERICK SNARE OVERSEAS CORPORATION

From	On
October 7, 1960	$ 130,085.99

CERTIFICATIONS OF LOSS

The Commission certifies that FREDERICK SNARE 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 One Million Seven Hundred Sixty-Two Thousand Two Hundred Thirty Dollars and Sixty-Six Cents ($1,762,230.66) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that FREDERICK SNARE OVERSEAS 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 One Hundred Thirty Thousand Eighty-Five Dollars and Ninety-Nine Cents ($130,085.99) with interest thereon at 6% per annum from October 7, 1960 to the date of settlement.

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

APR 16 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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