

INSULAR NAVIGATION CO
ORIGINAL FILE IN KCRC CW 12947

"PRINCESSA"

"KATIPONAN"

"CONDESA"

AGAR-RJ 201.3
CO, KCRC, TAGO
ATTN: Field Records Br

Return of Records Loaned
CO, ARCEN, TAGO

16 MAR 1956
Mr. Williams/mh/677

The file for Insular Navigation Co. (CU 12947) recently requested of your office is returned.

1 Incl
Insular Nav. Co. (1 folder)

for *G. F. Davis*
DAVID H. ARP, Colonel, AGC
Commanding
Arndt

RETURN TO:

WILLIAMS/mh/J
RPRB

397

CEBU ADVANCE QUARTERMASTER DEPOT
OFFICE OF THE COMMANDING OFFICER

FILE

CEBU, CEBU, P. I.

January 6, 1942

Insular Navigation Company
92 Lopez
Cebu, Cebu

FILE CW 12947

Gentlemen:

1. In compliance with verbal instructions from
The Commanding General of the Visayan-Lindanao Forces
the following boats are hereby requisitioned for the
United States Government, effective the date set after
each boat:

<u>M/S "Princessa"</u>	<u>January 1, 1942</u>
<u>M/S "Katipunan"</u>	<u>" 3, 1942</u>
<u>M/S "Facita"</u>	<u>" 7, 1942</u>

ALSO DATA ON MVV
"CONDESA"

J. D. Cook
J. D. COOK,
Lt. Colonel, QMC,
Commanding

EXHIBIT "E"

on file 12947 add to KC RC 3/16/56

A F F I D A V I T

BEFORE ME, the undersigned, on this day personally appeared RAFAEL FERRER who, after being duly sworn, upon oath states:

That I am a Filipino citizen, 54 years of age, married, and a resident of the City of Cebu, Philippines.

That I am a holder of a Masters Navigator, any ocean, any size vessel, license and I have held this license since 1922. That for three years prior to January 1, 1942 I was employed by the Insular Navigator Co., Inc.

That around January 1, 1942 I left the employment of the Insular Navigator Co., Inc. and became First Chief Officer of the Motorship "Dumaguete", and I remained in this position until March 1, 1942, at which time I returned to the employment of the Insular Navigator Co., Inc. as a Captain of the Motorship "Princesa" which ship was then under CHARTER to the government of the United States and in the services of the ARMY TRANSPORT SERVICES. For my services as Captain of the Princesa I was paid a monthly salary of \$550.00 by the USAFFE. I received all my instructions from Major C.Z. BYRD, QMC, ASSISTANT SUPERINTENDENT OF ARMY TRANSPORT SERVICE of Cebu.

That from March 1, 1942 until April 10, 1942 Motorship Princesa was used in the services of USAFFE in transporting supplies and troops between the various islands of the Philippines. There was on board a total crew of thirty three men, six USAFFE soldiers and one USAFFE Officer.

That on April 9, 1942 the Princesa was in the harbor of Cebu, Cebu, P.I. and I received instructions to bring her along-side of Pier No. 1 which I did. We were loaded with miscellaneous cargoes.

That at about ten AM on this date a Major (name unknown) of the USAFFE boarded ship and told me to stand by as we might receive sailing orders at any moment but it might be necessary to destroy the ship. He then placed explosives in the hold of the ship. On April 10, 1942 at 6 AM he told me to abandon the ship as it would be necessary to blow up the ship. We abandoned ship and then I saw the Princesa blown up and she sunk at the Pier No. 1 in Cebu.

That I was paid by the USAFFE for my services up to April 1, 1942 and I have not been paid for my services from April 1, to April 10, 1942.

That I have made the above statements and they are true to the best of my knowledge.

Rafael Ferrer
RAFAEL FERRER

SUBSCRIBED AND SWORN TO before me this 12th day of June 1945, at Cebu City, Cebu.

Emmett L. Whitsett, Jr.
EMMETT L. WHITSETT, JR.
1st. Lt., J A G D
Investigating Officer
Claims Service, USAFFE

EXHIBIT "I"

A F F I D A V I T

Personally appeared before me, the undersigned, Crispulo Daan, who upon being first duly sworn on oath deposes and says:

That he is a Filipino citizen and a resident of Talisay, Cebu;

That from 24 February 1942 to 15 May 1942, he was employed by the U. S. Army Transport Service as Chief Engineer of the M/S "CONDESA" at a salary of P532.50 per month; That the M/S "CONDESA" was used by the Army Transport Service to transport goods, supplies and troops between Negros and Iloilo;

That on 5 May 1942, the M/S "CONDESA" left Negros with a cargo of rice to be unloaded at Tacloban, and that this cargo was unloaded at Penamojoan, Carigara; that on 15 May 1942 while in Penamojoan, a radio order was received to sink the ship, and in pursuant of those orders, he opened the valves of the ship and it sunk in about 10 fathoms of water and was completely submerged, and so far as is known the ship is still in the same location; that at the same time and place and under the same orders, the M/S "SAN JOSE" was also sunk.

Crispulo Daan
CRISPULO DAAN

Subscribed and sworn to before me this 27th day of August, 1945, at Cebu City, Cebu.

Boynton Kane
BOYNTON KANE
2nd. Lt., JAGD
Investigating Officer
Claims Service, AFVESPAC

EXHIBIT "F"

CLAIMS SERVICE, PHILRYCOM
CONTRACT CLAIMS COMMISSION NO. 5

PROCEEDING NO. CC 5-X-4851 : Type: Procurement
 Claimant: INSULAR NAVIGATION COMPANY, a Corporation : Place Where Claim Arose: Cebu City, Cebu, Philippines
 Amount Claimed: ₱403,666.64 : Date Presented: 30 August 1945

CERTIFICATE OF RECONSIDERATION OF FORMER AWARD
AND DETERMINATION OF COMMISSION

1. Pursuant to the authority contained in Letter Order AG 150, 30 September 1946, JA, GHQ, APPAC; APPAC Regulations 25-20, GHQ, APPAC, 5 October 1946; First War Powers Act of 1941 (Public Law No. 354, 77th Congress); Executive Order No. 9001, 27 December 1941; WB Circular 53, 21 February 1946; Par 3, SO 160, 16 November 1945, GHQ, APPAC; and Par 4, SO 260, 12 November 1946, HQS, AFWESPAC, Contract Claims Commission No. 5 has made the following determination:

a. That the attached claim of INSULAR NAVIGATION COMPANY, a Corporation, against the United States of America is within the jurisdiction of this Commission under the above authority.

b. FACTS:

That claim was heretofore presented to this Commission by claimant, Insular Navigation Company, a Corporation; that acting upon such claim the Commission did, on 15 July 1946, enter an award in favor of claimant in the amount of ₱403,666.64 (\$201,833.32) covering rentals and alleged replacement values of motorships "Princessa" and "Katipunan," based on charter contracts executed on 7 March and 28 March 1942; and that to correct manifest errors on the face of the proceedings and by reason of new and material evidence (Exhibits MM, NN, NN-1, OO, and OO-1), the award heretofore entered by the Commission under date of 15 July 1946 should be, and the same is hereby, vacated and annulled.

That upon reconsideration of the claim of Insular Navigation Company, this Commission finds and adjudges as follows:

That on 1 January 1942, at Cebu City, Cebu, Philippines, the motorship "Princessa" was, with the owner's consent, unconditionally requisitioned by the United States Army Forces in the Far East. On 10 April 1942, said vessel was scuttled upon instructions received from Army authorities. Claim is for rental from 1 January to 10 April 1942 in the amount of ₱35,000.00 and for the alleged replacement value of the vessel in the amount of ₱252,000.00, making a total claim of ₱287,000.00. Basis of the claim is a charter contract dated 7 March 1942. Title to the vessel vested in the United States on 1 January 1942, the date of requisitioning. The award of this Commission is based only on the fair and reasonable market value of the vessel at the time and place of requisitioning which is the sum of ₱175,000.00.

That on 3 January 1942, at the same place, the motorship "Katipunan" was, with the owner's consent, unconditionally requisitioned by the United States Army Forces in the Far East. On 2 May 1942, said vessel was scuttled upon instructions received from Army authorities. Claim is for rental from 3 January to 2 May 1942 in the amount

File 0045

EB
X
D

Idem - 2 (sheet 2)

of $\$16,666.64$ and for the alleged replacement value of the vessel in the amount of $\$100,000.00$, making a total claim of $\$116,666.64$. Basis of the claim is a charter party dated 28 March 1942. Title to the vessel vested in the United States on 3 January 1942, the date of requisitioning. The award of this Commission is based only on the fair and reasonable market value of the vessel at the time and place of requisitioning which is the sum of $\$50,000.00$.

The total amount of the award for the two aforementioned vessels is $\$225,000.00$.

c. That the property procured was necessary to facilitate the prosecution of the war.

d. That the amount justly due and owing to the above claimant by the United States of America is $\$225,000.00$, no part of which has been paid. Because of procedural irregularities, payment cannot readily be effected through normal finance procedure.

2. Wherefore, the foregoing claim is approved in the amount of $\$225,000.00$ ($\$112,500.00$). This Determination of Commission, when approved by the Commanding General, PHILRYCOM, and upon execution by claimant of the attached release and acceptance agreement, will constitute authority for payment of this claim from current funds in the amount above determined.

Date: 2 January 1947



CONTRACT CLAIMS COMMISSION NO. 5

s/ Dale V. Thibaut
t/ DALE V. THIBAUT, Major, Inf., Member

s/ Lester H. Duquette
t/ LESTER H. DUQUETTE, Member

s/ Harwood Shoemaker
t/ HARWOOD SHOEMAKER, Member

GSCL 150/6FW HEADQUARTERS, PHILRYCOM, APO 707

25 JAN 1947

1947

Approved and payment to INSULAR NAVIGATION COMPANY, a Corporation, authorized in the amount of $\$225,000.00$ ($\$112,500.00$).

BY COMMAND OF MAJOR GENERAL MOORE:

E. R. CANTRELL
Captain, A.G.D.
Assistant Adjutant General

of \$10,000.00 and for the alleged replacement value of the vessel in
the amount of \$100,000.00, making a total claim of \$110,000.00. Items
of the claim to a certain party dated 22 March 1943. Title to the ves-
sel was in the United States on 3 January 1943, the date of registra-
tion. The award of the Commission is based only on the fair and
reasonable market value of the vessel at the time and place of registra-
tion which is the sum of \$22,000.00.

The total amount of the award for the two aforementioned
vessels is \$22,000.00.

It is noted that the property involved was necessary to facilitate the
operation of the war.

That the amount of the award is \$22,000.00, no part of which has been
paid. Because of procedural irregularities, payment cannot readily be
effected through normal financial procedures.

Wherefore, the foregoing claim is approved in the amount of
\$22,000.00 (\$22,000.00). This determination of the Commission, when ap-
proved by the Honorable General, WILLIAM H. HARRIS, and upon execution by
claimant of the attached release and acceptance agreement, will consti-
tute authority for payment of this claim from current funds in the
amount above determined.

Date: 5 January 1947

WARRANT CLAIMS CHECK NO. 2

- ✓ Wm. V. Thibaut / Wm. V. Thibaut, Major, USA, Retired
- ✓ Wm. H. Thibaut / Wm. H. Thibaut, Major, USA, Retired
- ✓ Harwood Shoemaker / Harwood Shoemaker, Captain, USA, Retired



25 JAN 1947

Approved and payment to INSURE INVESTMENT COMPANY, a corporation,
subjected in the amount of \$22,000.00 (\$22,000.00).

BY COMMANDER & MAJOR GENERAL WARRIS



Manila, 1 July 1947

CG-5-X-4851 - Insular Navigation Company

CG-5-X-4852 - Insular Navigation Company

M E M O

On Thursday, 26 June 1947, at 12:30, Commission No. 5 comprising of Messrs. Frank D. McSherry and Charles W. Miller, took off by PAL for Cebu to undertake a negotiated settlement of the above enumerated matters.

On Friday morning, 27 June 1947, a conference was held with claimant's counsel, Mr. Efrain Pelaez. This Commission, in contemplation of the actions undertaken by previous members of this Commission and subsequent events precipitated by Mr. Pelaez' activities on behalf of these claimants, considered and so offered to Mr. Pelaez a compromise figure in the sum of ₱423,500.00. Mr. Pelaez expressed the belief that this was a highly acceptable figure and promptly took off to confer with his clients. Upon returning, Mr. Pelaez advised that his clients, in the person of Mr. Go Chong Kang (Attorney-in-Fact, General Manager and a stockholder) wished to confer with the Commission.

In substance, it was Mr. Go's contention that claimants were entitled to a recovery in the sum of ₱542,000.00 (less 4%), his premise being the alleged contract entered into with Maj. Byrd, the first award and the Commission's issuance of the release, etc.. For the next few days, through the course of intermittent meetings, Mr. Go, now accompanied by one Jose Gotianuy a nephew of Mr. Go and also a stockholder of claimant organization, afforded no indication of relinquishing their position, although Mr. Pelaez mentioned that three weeks or a month ago, Mr. Go had indicated the desire to effect a settlement at a substantial reduction of the amount claimed. Seemingly transcending coincidence, Mr. Go inquired at one time during negotiations, "Didn't your office received instructions from Tokyo to okay the full amount of the claim?"

In the course of the above, Mr. Pelaez maintained that the compromise figure of ₱423,500.00 was fair and equitable. During the conversation with Mr. Pelaez as to the background of this transaction, i.e., the requisitioning, sinking, and subsequent entering upon the alleged contract by Maj. Byrd, it was insinuated by Mr. Pelaez that Maj. Byrd's action represented an undeclared consideration locally known as "pabagsak" (bribe). Although the above is not suggested as being conclusive, subsequent developments to be outlined will perhaps strengthen the belief as to the possibility.

On the evening of 30 June 1947, the first serious appearance of a compromise being effected occurred. Mr. Go, in an aside with the writer, suggested that if we could "see our way clear" to pay the claimed-for figure, we, the members of the Commission, would be "substantially taken cared of". I advised Mr. Go that their claim would be determined on the merits without the benefit of any additional considerations. Shortly thereafter, Mr. Gotianuy suggested a figure of ₱500,000.00. In the interest of the premises contained in the file and to conclude this matter before leaving Cebu, the Commission made a concession in the form of an offer for ₱450,000.00.

Mexico, 1 July 1947

00-2-2-4821 - Insular Navigation Company
00-2-2-4822 - Insular Navigation Company

M E M O

On Thursday, 26 June 1947, at 12:30, Commission No. 2 comprising
officers, Frank D. McHenry and Charles W. Miller, took off by air
for Cuba to undertake a negotiated settlement of the above enumerated
matters.

On Friday morning, 27 June 1947, a conference was held with
counsel, Mr. Frank Feiler. This conference, in con-
clusion of the action undertaken by previous members of this
Commission and subsequent events precipitated by Mr. Feiler's action
written on behalf of these plaintiffs, considered and so offered to
Mr. Feiler a comparable figure in the sum of \$25,000.00. Mr. Feiler
expressed the belief that this was a highly acceptable figure and
promptly took off to confer with his clients. Upon returning,
Mr. Feiler advised that his clients, in the person of Mr. G. G. Chery
Hagg (Attorney-in-Fact, General Manager and a stockholder) wished to
confer with the Commission.

In substance, it was Mr. G's contention that plaintiffs were
entitled to a recovery in the sum of \$25,000.00 (less 4%), his pro-
ceeds being the alleged contract entered into with Mr. G. G. Chery, the
first award and the Commission's issuance of the release, etc., for
the next few days, through the course of subsequent meetings, Mr.
G. G. was accompanied by one Jose Gortany a nephew of Mr. G. G. and also
a stockholder of plaintiff organization, afforded no indication of
retaining their position, although Mr. Feiler mentioned that
three weeks or a month ago, Mr. G. G. had indicated the desire to ef-
fect a settlement at a substantial reduction of the amount claimed.
Accordingly, Mr. G. G. indicated at one time during
negotiations, "Didn't your office receive instructions from Jose G.
to pay the full amount of the claim?"

In the course of the above, Mr. Feiler maintained that the
comparable figure of \$25,000.00 was fair and equitable. During the
conversation with Mr. Feiler as to the background of this conversation,
the reputation, standing, and subsequent entries upon the
alleged contract by Mr. G. G. Chery, it was indicated by Mr. Feiler that
Mr. G. G.'s action represented an undervalued consideration for the
known as "Gortany" (G. G.). Although the above is not suggested as
being conclusive, subsequent developments to be outlined will perhaps
strengthen the belief as to the possibility.

On the evening of 30 June 1947, the first serious appearance of
a compromise being offered occurred. Mr. G. G. in an aside with the
writer, suggested that if we could pay the amount of the claim, we could
obtain for them, we the amount of the claim, would be
"substantially taken care of" by Mr. G. G. Chery, it was stated
would be determined on the basis of the amount of the claim, the
total consideration. Jose Gortany, a nephew of Mr. G. G. Chery, the
a figure of \$25,000.00. In the life and to conclude
in the life and to conclude
Gortany made a concession



The claimants countered with a figure of 470,000.00. Further compromise was not effected.

On 1 July 1947, the claimants and their counsel again met the Commission at the airport at 0700 for the purpose of a last moment conference. The parties conferred until departure time at 0800 without reaching an agreement. Releases in the sum of \$150,000.00 were left with claimants to take under advisement and the claimants advised the Commission that they would be in Manila within a few days.

F. D. M.
C. W. M.



The statement covered with a figure of \$70,000.00. Further some
provision was not effected.

On 1 July 1967, the statement and their counsel again met the
Commissioner at the airport at 0700 for the purpose of a last moment
conference. The parties conferred until departure time at 0800 with
out reaching an agreement. Balances in the sum of \$450,000.00 were
left with statement to take under advisement and the statement ad-
vised the Commissioner that they would be in Manila within a few days.

E. D. M.
G. W. M.

RECEIVED
13 AUG 1967
CLAIMS SERVICE
AFWESPAC
APO 707

INSULAR NAVIGATION COMPANY

Two Claims; CG-5-X-4851, 4852

ANALYSIS OF CLAIMS FIGURES

The boats involved are described as follows:

"PRINCESSA": A single screw diesel engined, steel, passenger and cargo vessel built in Hongkong in 1930; 154' long, 28' beam, 11½' depth, tonnage 409 gross, 273 net. Claimants' value ₱252,000.00; Nelson's value ₱175,000.00.

"KATIPUNAN": A single screw diesel engined, steel, passenger and cargo vessel built in 1873 at Newcastle; 130.2' long, 22.2' beam, 6.6' depth; tonnage 208 gross and 152 net. This boat was formerly named "Gifford Jones", "Tayabas", "Comiguin" and "Calderon" and operated in the Philippine Archipelago for many years. It was 69 years old, was sunk and remained submerged for about 10 years, was salvaged, re-commissioned and re-engined. Claimants' valuation ₱100,000.00, Nelson's valuation ₱50,000.00.

"CONDRESSA": A single screw, diesel engined, composite, passenger and cargo vessel, built at Cebu in 1938; 121.52' long, 29.94' beam, 9.67' depth; tonnage 200.55 gross and 114.65 net. Claimants' valuation ₱120,000.00, Nelson's valuation, ₱80,000.00.

Rentals claimed by the Insular Navigation Company for a year's use are calculated at a rate equal to 50% of the alleged values of the ships. In other words, two years' rental would return to the owners all the alleged capital represented in the ships. The rental claimed for the "Katipunan" is ₱4,166.66 per month and the value claimed for it is ₱100,000.00. Thus the monthly rental for the bare boat equals 4.1666% of the alleged value of the boat (₱4,166.66 ÷ ₱100,000.00). At this rate, 12 months rental would equal 50% of the alleged value of the boat (12 x 4.1666 = 49.9999%) and return to the owner its entire alleged value in two years. Such a rate appears to be wholly unreasonable, especially where the article has a useful normal life of from 20 to 40 years. This particular boat was 69 years old when the government took it.

The same rental percentage obtains on the other boats ("Princessa"; 12 x ₱10,500.00 = ₱126,000.00 x 2 = ₱252,000.00; "Condessa"; 12 x ₱5,000.00 = ₱60,000.00 x 2 = ₱120,000.00). They range themselves as follows:

TABLE OF RENTALS

SHIP	ALLEGED VALUE	Claimants' Figures		Nelson's Figures	
		MONTHLY RENTAL	ANNUAL RENTAL BASED ON 50% OF ALLEGED VALUES OF SHIPS	SHIP VALUE	RENTAL % ON SUCH VALUE
"Princessa"	₱252,000.00	₱10,500.00	50% of Value of Ship	₱175,000.00	13.60%
"Katipunan"	100,000.00	4,166.66	50%	50,000.00	13.20%
"Condessa"	120,000.00	5,000.00	50%	80,000.00	15.00%
Totals	₱472,000.00			₱305,000.00	14% Av.

A comparison of the claimants' figures with the Nelson valuation is as follows:

	Value	Total Rental	Value	Total Rental
"Princessa"	₱252,000.00	₱25,000.00	₱175,000.00	₱6,666.67
"Katipunan"	100,000.00	16,666.64	50,000.00	2,181.67
"Condessa"	120,000.00	18,333.32	80,000.00	3,666.67
	₱472,000.00	₱69,999.96	₱305,000.00	₱12,515.01

TABLE OF VALUES
 The items: 10-2-1-1011, 1022

The items involved are described as follows:

"CONDOR": A single screw diesel engine, steel, passenger and cargo vessel built in Hongkong in 1930; 114' long, 28' beam, 11' depth, tonnage 205 gross and 112 net. Claims: value \$25,000.00; Nelson's value \$12,000.00.

"MANTON": A single screw diesel engine, steel, passenger and cargo vessel built in 1925 at Newcastle; 120'2" long, 28'2" beam, 6'6" depth; tonnage 205 gross and 112 net. This boat was formerly named "Ollford Jones", "Tayabas", "Camilla" and "Calderon" and operated in the Philippines for many years. It was 69 years old, was sunk and remained submerged for about 10 years, was salvaged, re-commissioned and re-rigged. Claims: valuation \$100,000.00; Nelson's valuation \$50,000.00.

"CONDOR": A single screw, diesel engine, composite, passenger and cargo vessel, built at Genoa in 1928; 121'2" long, 29'2" beam, 9'6" depth; tonnage 200 gross and 112 net. Claims: valuation \$120,000.00; Nelson's valuation \$60,000.00.

Rentals claimed by the Insular Navigation Company for a year's use are calculated at a rate equal to 5% of the alleged value of the ship. If other words, two years' rental which return to the owners all the alleged capital represented in the ship. The rental claimed for the "Mantona" is \$4,166.66 per month and the value claimed for it is \$100,000.00. Thus the monthly rental for the boat equals 4.166% of the alleged value of the boat (\$4,166.66 ÷ \$100,000.00). At this rate, 12 months rental would equal 5% of the alleged value of the boat (12 x 4.1666 = 49.9992) and return to the owner 100% of the alleged value in two years. Such a rate appears to be wholly unreasonable, especially where the article has a useful normal life of from 20 to 40 years. This particular boat was 69 years old when the government took it.

The same rental percentage obtains on the other boats ("Mantona": 12 x \$10,000.00 = \$120,000.00 x 2 = \$240,000.00; "Condor": 12 x \$25,000.00 = \$300,000.00 x 2 = \$600,000.00). They range themselves as follows:

TABLE OF VALUES

SHIP	ALLEGED VALUE	RENTAL	ALLEGED VALUE OF SHIP	RENTAL VALUE	NET VALUE
"Mantona"	\$100,000.00	\$4,166.66	\$100,000.00	\$4,166.66	\$95,833.34
"Condor"	\$250,000.00	\$10,416.66	\$250,000.00	\$10,416.66	\$239,583.34
Total	\$350,000.00	\$14,583.32	\$350,000.00	\$14,583.32	\$335,416.68

A comparison of the items' figures with the Nelson valuation

Total Rental	Total Value	Total Rental	Total Value
\$14,583.32	\$350,000.00	\$14,583.32	\$350,000.00
\$14,583.32	\$350,000.00	\$14,583.32	\$350,000.00
\$14,583.32	\$350,000.00	\$14,583.32	\$350,000.00



Total of Value and Rental Claimed . . . \$541,999.96
Total of Value and Rental by Nelson . . . 317,515.01
Difference between figures \$224,484.95

Thus claimants' figures are more than 70% in excess of the Nelson figures ($317,515.01 \times .70\% = 222,260.51 + 317,515.01 = 539,775.52$).

The amounts claimed are based on the terms of an alleged "survey" made by a board said to have been selected by a Major Byrd, OMC at Cebu. No copy of the "survey" on any of the ships is in the file. How a survey could be had when the boats were not available for inspection is not readily apparent. The boats were commandeered between the first and third of January 1942 (and claimant so notified in writing) while the alleged contracts were not executed until sometime in March 1942 (March 7th and 28th).

The authority under which the alleged survey was made or the procedural basis followed is somewhat obscure to the Commission (Ex. HH, #4851) because the referenced AR (Par. 8, AR 30-1315) has been unavailable for examination to date.

Among other things, the board was required to make "detailed survey of the physical condition of the ship, its equipment and machinery" and that "the vessel must be drydocked for the survey", but in case this was not possible a certain quoted clause (Ex. HH, #4851) should appear in the charter whereby the owner expressly waives a survey of the hull and equipment. This clause is not in the alleged charter contract. On the contrary, Par 2 of the alleged charter for the M/S "Princessa" and M/S "Katipunan" (Ex. F, DD, #4851) expressly state that a survey of the hull and other equipment as required by Par 8, AR 30-1315 had been made by the board of survey. This is incorrect. A survey of the hull was not made.

From other files in the office affidavits are on file by certain members of this board that the ships were not physically examined by the board and that certain certificates of survey signed by them covering certain ships at Cebu stating they had so examined them was an "error". (See File 59-X-6491, La Naviera Filipina, Inc., Exh. C-3, C-4).

The alleged charter contracts were therefore drafted contrary to express instructions and Par. 2 of such instruments, stating "that a survey of the hull and other equipments under Par. 8, AR 30-1315 has been made by Mr. M. E. Cleland, Sr., Superintendent Engineer", must necessarily have been a false statement.

F. D. M.



Total of Value and Rental claimed \$254,888.50
Total of Value and Rental by Nelson \$254,888.50
Difference between figures \$0.00

This statement of figures was more than 70% in excess of the Nelson
figures (254,888.50 x .70 = 178,422.05 + 76,466.45 = 254,888.50).

The amounts claimed are based on the terms of an alleged "survey"
made by a board said to have been selected by a Major Fred G. M. at
Goum. No copy of the "survey" or any of the ships in the file.
How a survey could be had when the boats were not available for ins-
pection is not readily apparent. The boats were commandeered between
the first and third of January 1942 (and claimant so notified in writing)
while the alleged contracts were not executed until sometime in March
1942 (March 1st and 28th).

The authority under which the alleged survey was made or the pro-
cedural basis followed is somewhat obscure to the Comptroller (Mr. M.
4821) because the referenced AR (Ex. 8, AR 30-1312) has been un-
available for examination to date.

Among other things, the board was required to make "detailed sur-
vey of the physical condition of the ship, its equipment and machinery"
and that "the vessel must be drydocked for the survey"; but in case this
was not possible a certain quoted clause (Mr. M. 4821) should appear
in the charter whereby the owner expressly reserves a survey of the hull
and equipment. This clause is not in the alleged charter contract. On
the contrary, Ex. 2 of the alleged charter for the M/S "Irishman" and
the "Irishman" (Mr. M. 4821) expressly states that a survey of
the hull and other equipment as required by Ex. 8, AR 30-1312 had been
made by the board of survey. This is incorrect. A survey of the hull
was not made.

From other files in the office attention was on file by certain
members of this board that the ship was physically surveyed by
the board and that certain certificates of survey signed by them cover-
ing the certain ship as both stating they had so examined them was an
"error". (See file 32-1-6121, in Review Division, Inc., Ex. 8-2,
6-1).

The alleged charter contracts were therefore dated contrary
to express instructions and Ex. 2 of such instruments, stating "that
a survey of the hull and other equipment under Ex. 8, AR 30-1312
has been made by Mr. M. E. O'Connell, Sr., Superintendent Engineer,"
must necessarily have been a false statement.

F. B. M.



BREED, ABBOTT & MORGAN
15 Broad Street
New York 5, N.Y.
320 Consolidated Investments Building
Plaza Goiti, Manila
Philippines

May 19, 1948

Air Mail - Special Delivery

Brigadier General Franklin P. Shaw
General Headquarters
Far East Command, U. S. Army
A.P.O. 500, Tokyo

Re: Procurement Claims of the
Insular Navigation Company
Claim Nos. CC5-X-4851
CC5-X-4852

Dear Sir:

I am addressing this letter to you to appeal from a decision of the Commanding General, Philippine-Ryukyus Command, which affirms a denial by his Chief of Claims Service of a request made by this firm on behalf of the Insular Navigation Company for a reconsideration of the determinations made on its claims for three ships chartered by the U. S. Army during the war and lost while in its possession.

For your information there are attached hereto copies of (1) a letter dated March 12, 1948 to the Chief of Claims Service requesting a reconsideration, (2) a letter dated March 15, 1948 from the Chief of Claims Service denying such request, (3) a letter dated April 16, 1948 appealing from said decision, and (4) a letter dated May 17, 1948 from the Commanding General affirming the decision of the Chief of Claims Service.

As the above letters show, the claimant has now exhausted its possible remedies in the Philippines. This appeal is accordingly being made to you as the appropriate officer in the next higher Headquarters from which the authority of the Claims Service stems.

I believe that my two attached letters dated March 12th and April 16th fully set forth the facts of the case. As stated in said letters, the claimant's grounds for its request for a reconsideration, and for this appeal, are twofold:

I. THE CLAIMANT FINDS ITSELF IN ITS PRESENT UNFORTUNATE PRE-DICAMANT DUE TO A REVERSAL OF BASIC POLICY BY THE CLAIMS SERVICE WHICH RESULTED IN AN EX PARTE "RECONSIDERATION" OF THE CASE. IN ALL FAIRNESS THEREFORE THE CLAIMANT SHOULD NOW BE GRANTED AN

Small

Brigadier General Franklin P. Shaw -2

May 19, 1948
Procurement Claims
Nos. CC5-X-4851 and
CC-X-4852.

OPPORTUNITY TO PROVE THE FAIR VALUE OF ITS SHIPS DESPITE ANY TECHNICALITY OF LAPSE OF THE TIME LIMITED BY THE RULES OF THE CLAIMS SERVICE.

As stated in my letters, an original award of \$541,000.00 was made and then the Claims Service held an ex parte "reconsideration" of the case without any notice to the claimant. It even went so far as to retain a licensed ship surveyor to submit an appraisal of the value of the vessels and based its second award of \$305,000.00 thereon. It did not, however, see fit to give the claimant any opportunity to produce its own proof of the fair value of the vessels.

If you are wondering whether the second award of \$305,000.00 represents the fair value of the ships, I should like to point out to resolve that question, in addition to the evidence already offered by me, that, some time after the making of said award, the Claims Service through its authorized representatives made an offer of settlement of \$450,000.00 to the claimant, which was not accepted.

In Major General Moore's letter of May 17th he states that there has been ample opportunity for the claimant to submit evidence of the fair value of its ships. He fails to state, however, that when the claims were first presented no one considered such evidence necessary or even material, least of all the Claims Service, as witness its first award based upon the charter parties. Then came the "reconsideration", of which the claimant was given no notice, much less any opportunity to present any evidence. That hardly seems fair procedure, or an "ample opportunity" to the claimant to present evidence of value. In view of those facts, it does not seem fair to penalize the claimant now for previously relying solely on the ground of jurisdiction, with which ground the Claims Service did not happen to agree but which, as you have indicated, certainly has merit and justice in it. Nor does it seem fair in view of the circumstances to rely on the technicality of the limitation of time provided for in the rules of the Claims Service as the ground for denying the claimant even the chance to prove its case.

Major General Moore also states that the file of the case does not disclose any revised appraisal by C. B. Nelson, which was mentioned as one of the grounds for my request for a reconsideration. Upon receipt of General Moore's letter I went to see Mr. Nelson yesterday, reminded him of the case and he stated that he had written to the Claims Service some months ago. He would not furnish me a copy but said that he would be glad to furnish the Claims Service with a copy upon its so requesting him. I shall now ask that such a request be made in writing, and, if I am successful, I shall forward a copy of Mr. Nelson's communication to you as soon as possible.

II. THE ORIGINAL AWARD OF \$541,000.00 WAS UNCONDITIONALLY ACCEPTED.

Brigadier General Franklin P. Shaw -3

May 19, 1948
Procurement Claims
Nos. CC5-X-4851 and
CC5-X-4852.

BY THE CLAIMANT AND THEREBY A BINDING CONTRACT WAS ENTERED INTO WHICH THE UNITED STATES GOVERNMENT CANNOT REPUDIATE.

In this connection, after the original award of P541,000.00 had been made and approved by the Commanding General and the usual form of release agreement sent to the claimant, properly executed by it and returned, the Finance Officer refused delivery of the checks by letter dated March 17, 1947 for the reason that he had received written instructions from the Claims Service to withhold payment since "a reconsideration is necessary and new determination will be made."

I understand that you are personally familiar with this phase of the case; that the then attorney for the claimant raised the point at a meeting held by you at the United States Embassy in Manila in April, 1947; and that upon your return to Tokyo a directive was issued to the Chief of Claims Service that the original award should be paid "unless very cogent reasons can be offered for action to the contrary". It is difficult to understand what cogent reasons there could be which have prompted the Claims Service not to honor its undertaking.

--oo00oo--

I sincerely believe that the claimant is entitled to a thorough consideration and determination of this appeal by you as Judge Advocate of General MacArthur's Headquarters. Your decision will in all probability be the final one closing the case, for it will be virtually impossible as a practical matter for the claimant to carry the case to the court of Claims in Washington due to the extreme difficulty of proof and the large amount of expense and time which would be involved. In brief, if this appeal is denied by you the avowed purpose of the United States Government to make fair and full reimbursement for property lost while in its possession will be defeated.

In view of the importance of this matter to our client, I am most anxious to come to Tokyo to discuss it with you at your earliest convenience. I have been advised that the appropriation of funds for the payment of Army Claims expires on this June 30th. It is therefore of the utmost importance to our client that the matter be settled at the earliest possible date. I would accordingly much appreciate the favor of your advice by cable at the above address (arrangements have already been made with RCA Communications, Inc. for payment) if and when such a conference will be agreeable to you.

Very truly yours,
/S/ JAMES BUELL ANDERSON
James Buell Anderson

Encls.

copy/gnv

329 Consolidated Investments Building
Plaza Goiti, Manila

March 12, 1948

ALL ABOUT SHIPS
NO WD ABOUT CREW

Commanding General
Philippine-Ryukyus Command
APO 707

Attention: Chief of Claims Service

Re: Claim No. CC5-X-4851
Claim No. CC5-X-4852

Dear Sir:

We are addressing this letter to you in connection with the two claims numbered as above stated filed in your Headquarters on August 30, 1945 by the Insular Navigation Company of Cebu City, Cebu in the respective amounts of ₱403,666.64 and ₱198,333.32 for the loss while in the possession of the U. S. Army during the war of its ships M. V. "PRINCESSA", M.V. "KATIPUNAN" and M. V. "CONDESA". As appears from the attached power of attorney, we have been requested by the Insular Navigation Company to prosecute said claims on its behalf.

The mimeographed form published by your Headquarters entitled "Application for Reconsideration and Waiver of Other Administrative Processes" has been duly completed and signed for each of said claims and a copy of each of said executed forms is attached to this letter. As stated in said applications for reconsideration, it is respectfully requested that an order be issued by the Chief of Claims Service providing for reconsideration of the above described claims for the following reasons:

A. New and material evidence proving that the fair values of the three ships lost were at the time of their loss substantially higher than the awards dated January 2, 1947 made by Contract Claims Commission No. 5 for said ships, which evidence was not available for presentation

- 2 -

Commanding General, Philippine Ryukyus Command

March 12, 1948

at the time of the determination of said claims by Contract Claims Commission No. 5, has now been obtained and is available for presentation. Briefly, said evidence includes the following:

1. Evidence proving the actual costs to the claimant of M. V. "CONDESA" and M. V. "KATIPUNAN" (See documents attached hereto, marked "Exhibit A" and "Exhibit B");
2. Evidence of the estimated replacement cost of M. V. "PRINCESA" in December 1941 (See the attached letter from the Hongkong & Whampoa Dock Co. Ltd., marked "Exhibit C");
3. Hull policies of insurance covering said ships in force at the time of their requisitioning by the U. S. Army, each of which sets forth a value for the vessel insured which is higher than said awards dated January 2, 1947. (Said policies are in our possession and are available for examination by you at any time);
4. Evidence of the fact that said ships were in good condition at the time of their requisitioning by the U. S. Army (See the attached affidavit of the Inspector of Hulls and Boilers of the Port of Cebu, marked "Exhibit D");
5. Appraisals by expert ship surveyors and experts having personal knowledge of said ships showing that they had a fair value at the time of their requisitioning substantially higher than said awards dated January 2, 1947 (See the annexed evaluations of Charles J. L. Schoefer, Surveyor of the American Bureau of Shipping, marked "Exhibits E, F and G", the annexed affidavit of Ramon Aboitiz, marked "Exhibit H" and the abovementioned "Exhibit D");

(It is also understood that G. B. Nelson & Co. upon whose survey of said ships it is believed said awards dated January 2, 1947 were based has recently written a letter to the Chief of Claims Service increasing his estimated valuation of one of said ships by \$25,000.00)

6. Evidence of the gross and net earnings^o of each of said ships prior to the war (such evidence will be produced in affidavit or other form if reconsideration is allowed);

- 3 -

Commanding General, Philippine-Ryukyus Command

March 12, 1948

7. Photographs of M. V. "PRINCESA" obtained from the Hongkong and Whampoa Dock Co., Ltd. showing said ship ready for launching and on her trial run and photographs which have been discovered in the possession of a former crew member of said ship (See "Exhibits I, J, K and L");
8. A drawing showing the general arrangement of M.V. "PRINCESA" received recently from the Hongkong & Whampoa Dock Co., Ltd. (Said drawing is in our possession and is available for your examination at any time.

B. A manifest mistake of law was made by Contract Claims Commission No. 5 in said awards dated January 2, 1947 in disregarding its previous awards dated July 16, 1946 subsequent to an acceptance thereof by the claimant and thus failing to carry out the terms and conditions of a valid and enforceable agreement of compromise and settlement. (This point will not be pressed on reconsideration but is set forth in this letter so that there can be no possibility of its waiver in the event of subsequent legal proceedings in this matter).

We are taking the liberty at this point of briefly recalling to your mind the facts and previous history of these claims. As stated at the beginning of this letter, Claim No. CC-X-4851 was filed on August 30, 1945 in the sum of \$403,666.64 for the loss of M. V. "PRINCESA" and M. V. "KATI-PUNAN", and claim No. CC5-X-4852 was filed on the same date in the sum of \$138,333.32 for the loss of M. V. "CONIESA". Said vessels were requisitioned by the U. S. Army during the early days of the war and thereafter charter party agreements were entered into for each ship between the U. S. Government and the claimant, in which an agreed replacement cost and an agreed monthly rental was fixed for each ship. The amounts of the claims filed were based upon said agreed replacement costs and monthly rentals. On July 16, 1946 awards were made by Contract Claims Commission No. 5 on said claims in the exact amounts claimed; thereafter said awards were approved by the Commanding General, AFWESPAC, and the claimant was officially notified of said awards by means of the usual "Release and Acceptance Agreement" published by your Headquarters. The claimant thereupon duly executed said "Release and Acceptance Agreements" and returned them to your Headquarters. On information and belief, checks in payment of said awards were drawn by the Finance Officer of your Headquarters on August 12, 1946, but when the claimant requested delivery of said checks, it was refused for the reason that the Finance Officer had been notified by the then Chief of Claims Service to retain said checks until further notice. Thereafter, on

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Commanding General, Philippine-Ryukyus Command

March 12, 1948

December 18, 1946 the Finance Officer received a further notice from the Chief of Claims Service that said checks be cancelled since reconsideration of said claims was necessary and a new determination thereof would be made, and on January 2, 1947 Contract Claims Commission No. 5 reconsidered the claims and reduced its award on Claim No. CC5-X-4851 to P 225,000.00 and its award on Claim No. CC5-X-4852 to P 80,000.00. No notification of said reconsideration was given to the claimant, nor did it have any opportunity to present any evidence in support of its claims. After the claimant was officially notified by your Headquarters of said awards dated January 2, 1947, we are advised that the attorney who was handling the matter at that time requested a reconsideration, but solely on the ground that Contract Claims Commission No. 5 had acted outside of its jurisdiction in reconsidering the claims. Said request for reconsideration on that ground was denied by the Chief of Claims Service.

When the claimant requested this firm to handle the matter and we examined the files we came to the immediate conclusion that the primary question in the case - the fair and reasonable value of the vessels - had never been adequately presented to the Commission and therefore, before any request for reconsideration reasonably and properly could or should be made, that we must obtain evidence showing that the fair and reasonable value of the ships was substantially greater than the awards made. For the past months we have been marshalling such evidence and, as a result of our investigation, it is our sincere belief that the awards dated January 2, 1947 do not by any means reimburse the claimant for the fair values of its ships plus fair rentals thereon and that, if a reconsideration of these claims is allowed and the claimant permitted to produce the newly acquired evidence now available, the awards will be substantially increased. We also believe that if a reconsideration is allowed a large amount of time of everyone concerned can be saved by the submission of substantially all of the proof by means of a memorandum, affidavits and other documentary evidence, if such is agreeable to the Commission, and that little, if any, oral testimony will have to be presented.

In conclusion, we should like to stress once again the fact that this claimant has not at any time during these proceedings, and particularly at the time when the awards of January 2, 1947 were made, had a real opportunity to prove the most important element of its case - the fair value of its ships. We sincerely believe that a denial of this opportunity would be a manifest injustice, and that only by granting it a chance to present its case can a fair and reasonable reimbursement for these ships be fixed, which we feel certain, in the final analysis, is the purpose of the U. S. Government with relation to all private property lost during the war while in its possession.

- 5 -

Commanding General, Philippine-Ryukyus Command

March 12, 1948

Trusting that you will favor us and our client with a decision as to this request at your earliest convenience, we are,

Very truly yours,

Bread Abbott & Morgan
by James Buell Anderson
James Buell Anderson

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND
OFFICE OF THE CHIEF OF CLAIMS SERVICE

APO 707
15 March 1948

CC-5-X-4851 Insular Navigation Company
CC 5-X-4852 Insular Navigation Company

Messrs. Breed, Abbott & Morgan, Attorneys
320 Consolidated Investments Building
Plaza Goito, Manila

Attention: Mr. James Buell Anderson

Dear Sir:

Receipt is acknowledged of "Application for Reconsideration and Waiver of Other Administrative Processes" and supporting papers, filed by you on behalf of Insular Navigation Company as to determinations entered in the above claims dated 2 January 1947.

The files of this office not only reflect that repeated opportunities were extended claimant to file such a request, including an extension of time to do so and which were not accepted but positive refusal of the claimant to submit to the general jurisdiction of a reconsideration commission in a re-examination of the claims. This refusal was made to this office more than six months ago. Under the rules, requests for reconsideration must be filed within 90 days after the date of the determination in question.

We regret the necessity of advising you that such request cannot at this late day receive favorable consideration and must be denied.

Very truly yours,

(Sgd.) William S. Eley
WILLIAM S. ELEY
Colonel, Infantry
Chief of Claims Service

C O P Y :

/gmv

Incl 2 to Incl 1

320 Consolidated Investments Building
Plaza Goiti, Manila

April 16, 1948

Commanding General,
Philippine-Ryukyus Command
United States Army
A.P.O. 707

Re: Procurement Claims of the
Insular Navigation Company
Claim Nos. CC5-X-4851
CC5-X-4852

Dear Sir:

This letter is being written to you at the suggestion of Lieutenant Colonel Brown of your Headquarters to acquaint you with the facts surrounding, and to appeal from, a decision of the Chief of Claims Service of your Headquarters denying a request made by this firm on behalf of the Insular Navigation Company for a reconsideration of the determination made on the above numbered claims of said company for its three ships, M/V "PRINCESA", M/V "CONDESA", and M/V "KATIPUNAN", destroyed during the war while in the possession of the U. S. Army.

Attached hereto for your information are (1) a copy of our letter dated March 12, 1948 to yourself (attention of the Chief of Claims Service) requesting reconsideration, and (2) a copy of the letter dated March 15, 1948 from the Chief of Claims Service denying such request. To avoid making this matter too voluminous I am not attaching hereto the various documents submitted to the Chief of Claims Service with our request for reconsideration, but if at any time you desire to examine them they will be available to you.

The facts of the case in brief follow. The Insular Navigation Company filed two claims totalling P541,000 for the loss of its said ships chartered by the U. S. Army based upon so-called agreed "replacement costs" in the charter party agreements plus the agreed rentals provided for therein. To prove its claims the claimant submitted the charter party agreements and evidence showing that the ships were lost while in the possession of the U. S. Army. The Claims Service made awards totalling P541,000 for the full amounts requested, you signed said awards, checks were then drawn by your Finance Officer and claimant was officially notified. However, when the claimant appeared to claim the checks, delivery was refused. Some months later, without any official notification to the claimant and without giving it the opportunity to submit any proof, the Claims Service on its own motion "reconsidered" ex parte the claims and made new awards totalling only P305,000. It is believed that said "reconsideration" was made because of a reversal

Del 2 to Del 1

Commanding General
Philippine-Ryukyus Command

- 2 -

April 16, 1948

by the Claims Service of its policy as to the validity of the charter parties entered into at the beginning of the war between the U. S. Army and various shipowners in the Philippines. Apparently the principal evidence upon which these new awards were based was an appraisal of the ships made by C. B. Nelson & Co., ship surveyors, which company was retained for that purpose by the Claims Service on its own motion. The claimant was not given any opportunity at that time to submit appraisals by other experts or to submit any evidence showing the fair value of the ships at the time they were commandeered.

This firm is prepared to submit proof of the fair value of said ships but our request for permission to do so has been denied, as stated above, on the ground that the request was not made within the time limit fixed by the rules of the Claims Service.

Before proceeding further, I desire to state that, as a result of the considerable amount of evidence I have obtained, including cost figures of the ships, estimates of replacement costs in 1941 made by the builders themselves, hull insurance valuations, appraisals by expert ship surveyors, such as Mr. Charles J. L. Schoefer of the American Bureau of Shipping, and other evidence, it is my sincere conviction that the claimant has not by any means been fairly reimbursed by the U. S. Government for the value of its ships and I am convinced that I can prove that fact if given a fair chance to do so.

The Chief of Claims Service has stated in his letter that the reason for his decision was that the time limited by the rules of the claims Service to make a request for reconsideration had lapsed. In reply, I should like to point out that this case is not the usual one, inasmuch as the claimant's present predicament is the result of a reversal of basic policy by the Claims Service itself after it has made awards on the claims in full and you had approved said awards. The Claims Service has had a "reconsideration" on its part based upon its own evidence to the very substantial damage of the claimant. It now seems only fair that the claimant should also be allowed a reconsideration regardless of technical limitations of time. If it is granted a fair chance to submit its evidence and it is considered fairly and impartially by the Claims Service, there can then be no complaint if the result is not fully to its liking. But at least it should be granted a fair chance to prove its case and that is all that we are asking.

If it is thought that we are not offering to present any new evidence which could not have been presented when the claims were first "reconsidered", allow me to point out again that the claimant was never officially advised of that "reconsideration" and was not at that time given the opportunity to introduce any evidence. Furthermore, I have been advised that C. B. Nelson & Co., the surveyors upon whose appraisal so much weight was placed in said "reconsideration" in arriving at the lowered awards of P305,000, has recently addressed a letter to the Claims Service amending its appraisal to

Commanding General
Philippine-Ryukyū Command

- 3 -

April 16, 1948

increase the estimated value of one of the ships by ¥25,000. That fact in itself seems a strong argument for allowing this appeal and granting the claimant a fair chance to prove the fair value of its ships.

In conclusion, I should like to state that it appears that there has been some personal ill will and animosity aroused during the long history of this case by certain unfortunate publicity and other occurrences. While I can readily understand and sympathize with such feelings, I feel very strongly that they should not be allowed to obscure the factors in the case which from the point of view of fairness I believe are the primary ones and which I have set forth in this letter. Furthermore, I am not suggesting that personal feelings have weighed in the present outcome of the case but, in view of their very presence, I would deeply appreciate your impartial attention to this appeal.

Hoping that you will favor us with your decision as to this matter at your earliest convenience, I am,

Respectfully yours,

James Buell Anderson

JBA/bl
Encls.

C O P Y:/gnv

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND

GSCLR

APO 707

17 May 1948

Mr. James Buell Anderson
320 Consolidated Investments Bldg.
Plaza Goiti, Manila, P. I.

Dear Sir:

Your letter of 16 April 1938 relative to Claims Nos. CC-5-X-4851 and CC-5-X-4952 (Insular Navigation Company), has been carefully considered after a thorough review of the files. It appears that your request for reconsideration is based primarily on the ground that you desire to present evidence relative to valuation of the 3 ships which are the subject of the claims; and this is predicated upon the theory that you have not previously been afforded an opportunity to present such evidence.

The file of the case reflects that the claims were filed with Claims Service on 30 August 1945, and that a determination was entered on 15 July 1946. During this time, it is felt that had the claimant desired to do so, it had ample opportunity to present any evidence it desired relative, to the values of the ships; however, it apparently elected to rely solely upon the charter parties rather than submit affidavits of witnesses concerning the matter of valuation. Also, it is noted that subsequent to the reconsideration on 2 January 1947, the claimant expressed dissatisfaction and requested reconsideration solely on the question of jurisdiction and at this time refused, though given an opportunity, to present all matters for reconsideration including valuation of the ships. Six months subsequently, request for reconsideration was again made and as noted in letter attached to your aforesaid correspondence, the Chief of Claims Service, on 15 March 1948, denied the same by reason of its untimeliness.

It is appreciated that you feel that justice and equity would be served by being afforded another opportunity to present additional evidence and this is based partly on your understanding that C. B. Nelson has revised an appraisal previously furnished the Commission which reconsidered the claims. The file does not disclose such an appraisal as alleged as having been made or submitted.

Study of the record shows that the Commission had before it sufficient competent evidence to arrive at a fair determination of the value of the ships, and, acting on impartial testimony, arrived at its conclusion. The policy relative to time limitations of filing of requests for reconsiderations is not unusual or unjust.

Incl 4/6 Incl 1

From all of the above, and with due regard to your thoughts in the matter, it must be concluded that your requests be denied and the case considered as closed.

Sincerely,

GEO F. MOORE
Major General, US Army
Commanding

COPY
? /gnv

Claim of Insular Navigation Company

COG # 90

TO: COCS

11 June 1948

Transmitted herewith is the claim of the Insular Navigation Company. From a review of the file and the correspondence attached thereto, it is recommended that this be referred to a reconsiderations commission for further evaluation and study. It is further recommended that any supporting data that G. B. Nielson may provide this Service be secured as part of the exhibits. It is further recommended that the attorney of the claimant be contacted and advised of this action and before any determination is entered, an agreement be made with him that any award heretofore made and considered be waived and vacated and that he will abide by the determination made by the reconsiderations commission in this case.

JOHN J. MADDEN
Major, JAGD
Acting Director, Processing Division

OSCL

CC-5-X-
4851 and
CC-5-X-
4852

DKS/RS/jcv
UNIV 373

: Claim of INSULAR NAVIGATION COMPANY.

(3)

From : Chief of Claims Service TO: OCG 10 May 1948
THRU: D/C and C/S

1. Further information requested in C/N (2) is submitted in reply to the following inquiries:

a. On what, in general, did the Claims Commission base its original decision?

The original decision of the Claims Commission dated 15 July 1946 is based on charter parties entered into by the Army and claimant.

b. On what did claimant base his original request for reconsideration and on what general basis did the reconsideration commission disallow the increase?

The claimant did not request reconsideration from the original determination. Said determination was reconsidered on the motion of the Government and the Commission decreased the amount of the award previously entered by reason of mistake of law and new and material evidence. The mistake of law was founded on the proposition that the original determination was in error in holding the charter party a binding contract upon the Government. The new and material evidence considered were appraisals not previously obtained or presented to the Commission for its consideration. By reason of the mistake of law above-stated, the consideration of such appraisals were not deemed necessary by the Commission in making the original determination. The request for reconsideration made by the claimant after the claim was redetermined centralized in attacking the jurisdiction of the Commission in making its redetermination.

c. Were there any unusual circumstances of this case; for example, are statements in the enclosed portion of paragraph 3 of Mr. Anderson's letter correct? If so, are such actions legal and ethical? It is believed Colonel Shaw of FIC was interested in the above circumstances and made some comments on it. What, if any, in general were they?

COMMANDING GENERAL'S FILE COPY

H

BASIC: Check Sheet, dtd 10 May 48, Subj: "Claim of Insular Navigation Company".

The recitation referred to is substantially correct. With reference to the portion reciting that no official notification was given to the claimant and thus, an opportunity to submit any proof was not afforded must be qualified with the understanding that the claimant had already presented its evidence in due course and all the time needed or requested by it to present evidence of valuation was afforded and furthermore, that the charter parties were based on valuation opinions of three experts in this matter and appropriate weight was given to such by the Commission. Further, it must be noted that on 19 August 1947, claimant was requested to present its evidence but refused to do so.

A court always has inherent power and jurisdiction to reconsider its former decisions to correct any errors prior to the entry of judgment. The action of the Commission in reconsidering the claim in this manner is legal and is supported by the following authority:

Morgan v. United States (Ct. Cl.) 8 Fed Supp.
746, 751-752
Road Improvement Dist. No. 4 of Conway County,
Ark. v. Wilkinson (CCA) 5 Fed (2d) 416
Colorado Milling & Elevator Co. v. Howbert
(CCA) 57 Fed (2d) 721
Big Diamond Mills Co. v. United States (CCA)
51 Fed (2d) 721
1 Corpus Juris 570, Sec. 105 Armour & Co. v.
Rensker (CCA) 202 F. 901
Moehlensh v. May hew (Wis.) 119 N. W. 826
Richardson Lumber Co. v. Hooy et al (Mich.)
189 N. W. 923
Jackman v. Northwestern Trust Co. (Or.) 170
P. 304
Tarbox v. Tarbox (Me.) 89 A. 194

The action is also well established by the common-law and statutes, and is within the Canons of Legal Ethics as enunciated by the American Bar Association and all cognate organizations.

It is the opinion of this office that to fail to reconsider under the circumstances then extant would have been unethical and a neglect of duty on the part of Claims Service to see that full and complete justice was had for the Government and the claimant alike--that correct payments were made--no more--no less. Col. Shaw of FBC was interested in the above circumstances and he was in full accord

BASIC: Check Sheet, dtd 10 May 48, Subj: "Claim of Insular Navigation Company".

with the action taken. Likewise, also was Col. Heckman and Capt. Wilkins of that office in accord with the action taken. Comments in writing by Col. Shaw are not contained in the file.

d. Is the 90-day limitation normally imposed on requests for reconsideration, a rule set up locally, or by directive from higher headquarters?

A 90-day limitation is not only normally imposed, but it is universally applied on requests for reconsideration. Compliance with such rule is a condition precedent to having the case reconsidered in all instances. There have been no deviations from the rule to this date. Paragraph VII of "Rules for Reconsideration" reads as follows:

"VII. LIMITATION ON FUTURE APPLICATIONS FOR RECONSIDERATION.

1. Commencing on 1 August, 1947, no application for reconsideration will be submitted to or considered by a Reconsideration Commission unless the claimant has filed written application therefor with the Chief of Claims Service within ninety (90) days after the transmittal of notification to him, his agents or attorneys, of the determination of a Contract Claims Commission of his said claim".

In April 1947, a Reconsideration Commission was established by this Headquarters and the rules submitted to the FRC and referred to with the approval by the Judge Advocate General in Par 8, A-4, of his report to the Commander-in-Chief, 15 April 1947. Copy of said report was Inclosure No. 2 to Check Note to your office from this office dated 5 August 1947, Subj: "Status of the Insular Navigation Company Claims".

2. Paragraph 2 of preceding Check Note is complied with and there is transmitted the file in this claim for your convenience in the event that your office may desire to take action varying from the recommendations heretofore made. Return of file upon completion is requested.

2 Incls: n/c

1 Incl:

File of subj claim

DELL KING STEUART

Lt. Colonel, JAGC

Acting Chief of Claims Service

DKS/rga

GSCLR

Claims Nos: CG-5-X-4851 & CG-5-X-4852 (Insular Navigation Co.)

FROM: Chief of Claims Service TO: CG 4 May 1948
THRU: DC and C/S

I. Discussion. A letter dated 16 April 1948 from Mr. James Buell Anderson requesting reconsideration of the determinations made on above mentioned claims on behalf of the Insular Navigation Company for its three (3) ships, M/V "Princesa", M/V "Condessa", and M/V "Katipunan", destroyed during the war while in the possession of the United States Army, was referred to this office for reply.

a. In the attached proposed reply to Mr. Anderson, he is informed that after a thorough review of the case, it was determined that claimant had ample time to present any evidence it desired relative to the values of the ships, however, since it did not submit such needed evidence during the period allowed, the request for reconsideration is denied.

b. Furthermore, in answer to their statement that C. B. Nelson, and Company made a revised appraisal of the value of one of the ships, Mr. Anderson is advised that the claim files do not disclose such an appraisal.

II. Recommendation. That the proposed letter for the signature of the Commanding General be signed and dispatched.

2 Incls

1. Ltr fr Mr. J. B. Anderson, dtd 16 Apr 1948 (Tab A)
2. Proposed ltr for sig of CG (Tab B)

DELL KING STEUART
Lt. Colonel, JAGD
Acting Chief of Claims Service

COMMANDING GENERAL'S FILE COPY
98
JES

FPS/JH/dk

GENERAL HEADQUARTERS
FAR EAST COMMAND

AG 095 (29 May 48)JA

APO 500
29 May 1948

SUBJECT: Claims of Insular Navigation Company

TO: Commanding General, Philippines-Ryukyus Command, APO 707

There are inclosed, for your consideration and such further action as you may deem appropriate, letter dated May 19, 1948, from James Buell Anderson, addressed to the Judge Advocate, General Headquarters, Far East Command, with reference to subject claims, and the inclosures thereto, together with a copy of the reply of the Judge Advocate thereto dated 27 May 1948.

BY COMMAND OF GENERAL MacARTHUR:

J. M. EBBITT,
Captain, AGD,
Asst Adj Gen.

2 Incls

1. Ltr 19 May 48 fr
J. Anderson, w/4
Incls
2. Cpy ltr fr JA,
27 May 48

AG RECORDS SB (4)VB-142.c

15810
[Signature]

TPS\JH\9K

GENERAL HEADQUARTERS
FOR EAST COMMAND

AFD 500
29 May 1948

AL(8) 29 May 48 JA

SUBJECT: Claims of Insular Navigation Company

TO: Commanding General, Philippines-Ryukyus Command, APO 70Y

There are enclosed for your consideration and such further action as you may deem appropriate, letter dated May 19, 1948, from James H. Hoff, Anderson, addressed to the Judge Advocate, General Headquarters, For East Command, with reference to subject claim, and the inclosures thereto, together with a copy of the reply of the Judge Advocate thereto dated 27 May 1948.

BY COMMAND OF GENERAL HEADQUARTERS:

J. M. EBBITT,
Captain, AGO,
Asst Adj Gen.

2 Incls
1. Ltr 19 May 48 fr
J. Anderson, w/A
Incls
2. Dpy ltr fr JA,
27 May 48

RECEIVED
15 JUN 1948
AGO 70Y

RECEIVED
31 MAY 1948
GHQ-FEO
A. G. O.

AG RECORDS (4) 13-14-48

1281

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) ss:
)

10/15/48

A F F I D A V I T

KENNETH B. DAY, of legal age, married, a citizen of the United States of America and a resident of Manila, Philippines, being first duly sworn, deposes and says:

1. I am the President of the Philippine Refining Co., Inc. having its general office at 1035 Isaac Peral, Manila. I am making this affidavit at the request of Mr. James B. Anderson of the law firm of Breed, Abbott & Morgan to substantiate the statements in regard to the purchase in 1929 of certain ships by the Insular Navigation Company from the Agusan Coconut Company contained in an affidavit dated November 22, 1947 sworn to by Mr. Go Chong Kang in support of the claim of said company filed with the Claims Service, PHILRYCOM, U. S. Army, for three ships lost during the war.

2. I am familiar with the Agusan Coconut Company and with some of its affairs and activities. Until about the year 1923 the Philippine Refining Co., Inc. acted as manager of its affairs and I was the person directly in charge of their supervision. Thereafter, the Philippine Refining Co., Inc. no longer acted as its manager, but I remained in touch with it and was generally familiar with its activities. I know for a fact that the Agusan Coconut Company sold during or about 1929 three ships, the "GIFFORD JONES", the "YRUNA" and the "PACITA", to the Insular Navigation Company. I also know that the purchase price of said ships was \$100,000, or approximately that amount. How that amount was split up between the three vessels, I cannot say, but I do know that the S/S "GIFFORD JONES", being a steel vessel, was considered the most

- 2 -

valuable of the three ships. On that basis, the figure of ₱55,000 does not seem unreasonable as the purchase price of said vessel.

3. To my knowledge, the Insular Navigation Company thoroughly reconditioned the S/S "GIFFORD JONES" sometime after acquiring it and then placed it in the coastwise trade under the name of M/S "KATIPUNAN".

Kenneth B. Day

KENNETH B. DAY

SUBSCRIBED AND SWORN TO before me this 15th day of June, 1948, in the City of Manila, Philippines, affiant exhibited to me his Residence Certificate No. A-22272 issued on the 7th day of January 1948 at Manila.

Jose Blanes

NOTARY PUBLIC
Until December 31, 1948.

Doc. No. 708
Page No. 60
Book No. IV
Series of 1948.

HEADQUARTERS
PHILIPPINE SYUKYUS COMMAND
OFFICE OF THE CHIEF OF CLAIMS SERVICE

APO 707
17 June 1948

Contract Claims Commission for Reconsideration No. 89 reconvened pursuant to the call of the President at 1055 hours, 17 June 1948. The following members of the Commission were present:

Major John J. Madden, JAGD	President
Captain Francis J. Grogan, JAGD	Member
Captain Bernard E. MacBride, JAGD	Member

Also present were Mr. James Buell Anderson, attorney for the claimant, and Mr. Go Chong Kang, claimant. The Commission then proceeded as follows:

MAJOR MADDEN: Mr. Anderson, while you are here with Mr. Kang, we went over this thing yesterday and they say I have a call from Mr. Nelson and have, now, from the evidence you have submitted in your insurance policies and this argument and the evidence you have in file, decided that we would like at this time to make a compromise offer to you to settle this matter of ₱375,000. If you wish time to talk to your client, we will give you the time and if not, we have no argument in that.

MR. ANDERSON: Our position is that we feel that the Byrd Survey Board could be followed and honored by this Commission; and it made an evaluation of three ships of I believe, ₱473,000. Unless there is some good reason why it should not be followed and I sincerely believe that we have submitted a great deal of evidence made previously, and that that appraisal was a very conservative one. The survey made by Mr. C.B. Nelson after the war and as I understood, at the request and expense of Claims Service, I frankly don't feel that ₱375,000 recompenses this claimant for those ships by all means. I feel that in all justice that he should be paid the amount that was appraised by the Byrd Board, possibly at a fair rental, not the rental provided for at the request of Claims Service; this fair rental depends upon what you consider the value of the ships for the time it was used as given in previous evidence. I could talk off the record a minute, and very seriously

The counter offer that I had presented and which I believe we are, in all rights, entitled to, the value is the amount determined for the three ships by the so-called "Byrd Board" which I believe is ₱473,000 plus a reasonable rental for the amount of time that those ships were in the possession of the Army, based upon the fair value of these. That would be my counter-proposal, the exact amount of which I don't know, but I think it would be in the neighborhood of ₱473,000, plus a reasonable rental.

CAPTAIN MACBRIDE: This Commission, so far as I know, has been guided to a great extent by the evidence which was submitted and particularly by the evaluation made by the Byrd Board. We have considered them seriously.

MR. ANDERSON: Well, your offer of compromise is a long way off from the Byrd Board Survey. I realize that this is an offer of compromise. Mr. Kang has notes in regard to the first compromise

made by Mr. Miller and Mr. McSherry. I don't know if you want to see those any way.

MAJOR MADDEN: I don't think you have any further evidence to submit?

MR. ANDERSON: I have no additional evidence. If the Reconsideration Commission has any questions in their mind and if there is anything else they need, I will be able to obtain it. At the moment I can think of no more.

CAPTAIN GROGAN: As far as you are concerned, the evaluation of the Byrd Board plus a reasonable value as rental, we are quite at a divergence there with regard the figures. Have you any other comment to make?

MAJOR MADDEN AND CAPTAIN McBRIDE: None.

MAJOR MADDEN: Mr. Anderson, the Board would like to make you a final offer of \$400,000 which we are going to recommend to the Commanding General for approval. However, in making this offer to you, this is no guaranty that you will receive this amount. As you understand, this is only a compromise offer and whether you answer or not, it is subject to the approval of the Commanding General. I now ask Mr. Anderson if your claimant wishes to compromise on the offer of \$400,000.

MR. ANDERSON: Before I put any answer on the record, I will have to talk it over with my client.

If this is permissible, after talking with my client, I would like to reserve either my acceptance or rejection of this offer for a matter of a few days. In other words, we should like to state that at the present time I am not either accepting or rejecting this offer on behalf of Insular Navigation Company, but wishes to have sufficient time to consider the matter.

There being no further questions, the Commission for Reconsideration, at 1140 hours, adjourned.

WSE/JJM/jcv
Univ 373

GSCL
CC-5-X-
4851

: Claim of INSULAR NAVIGATION COMPANY, A Corporation.

From : Chief of Claims Service TO: CG 18 June 1948
THRU: D/C and C/S

1. In accordance with 1st Indorsement dated 3 January 1947, marked Inclosure 1, Determination of Commission (Tab A), approving attached claim is forwarded for approval and signature authorizing payment.

2. On 30 August 1945, above-named claimant filed its claim (Tab C), against the United States of America, in the amount of ₱541,999.96 for value of three ships, namely: "Princessa", "Katipunon", and "Condessa", and rental value of same, commandeered by the United States Army in January, 1942 at Cebu City, Cebu, Philippines.

3. Under date of 2 January 1947, Contract Claims Commission No. 5 entered two determinations approving said claim in the total amount of ₱265,000.00, but which claimant refused to accept.

4. Upon request and submitting new and material evidence, the Commission finds that a manifest mistake of fact and law has been committed, and therefore entered another determination on 18 June 1948, awarding claimant the sum of ₱400,250.00 (\$200,125.00). By reason thereof, the awards entered on 2 January 1948 are hereby vacated and annulled.

5. A check has been made of the current List of Blocked Nationals and the name of claimant company and its stockholders do not appear thereon.

6. Approval is recommended.

7. Request return of file upon completion of action.

2 Incls:

- 1. 1st Ind dtd
3 Jan 47
- 2. File of subj claim

WILLIAM S. HENY
Colonel, Infantry
Chief of Claims Service

*Do Vanerhu no 32242 June 48 acct
W A R Lloyd, Lt Col FA, APO 707
S/A 210-623*

AG Records File Copy

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HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND
CONTRACT CLAIMS COMMISSION FOR
RECONSIDERATION NO. 89

Contract Claims Commission for Reconsideration No. 89 convened pursuant to the call of the President and notification of claimant at 1400 hours, 16 June 1948. The following members of the Commission were present:

Major John J. Madden	President
Captain B. B. MacBride	Member
Captain Francis J. Grogan	Member

Mr. J. B. Anderson, Attorney for claimant was also present. A hearing then proceeded as follows:

MAJOR MADDEN: Mr. Anderson, all of the members of this Commission have gone over the file and in our opinion, there is a question as to the merits of the claim. We only question this Commission as is, as to the valuation. Is there anything you have to say in regard to what I have mentioned up to this point?

MR. ANDERSON: Before presenting any further evidence, I have a memo which I like to submit in addition to the evidence I have already submitted in connection with the valuation. I should like to ask the permission of the Commission on the legal question whether or not a binding agreement of compromise and settlement was entered into when \$541,000.00 was made. A release was not made and signed officially to Claims Service. I would like to know whether or not you are considering that question. There is no evidence necessary because that is merely a legal question. If you are considering that question, I should like to submit a memo of law in addition to what we are speaking this afternoon. I can restate them in detail.

MAJOR MADDEN: In answer to that, Mr. Anderson, this case is referred to us to reconsider. However, on the indorsement it says to accept any further evidence of value of any case we can reconsider. We can consider this as a new matter.

MR. ANDERSON: I should like to retain the rights of the claimant to press in the Court of Claims or any other appropriate legal tribunal the proposition that a valid compromise agreement and settlement has been previously made when the original award of \$541,000.00 was made and accepted by the claimant in the original award of July 16, 1946. Before presenting any additional evidence on valuation of the ships, or discussing the evidence in the record, I should like to hand to you, gentlemen a memo before this Commission on that question which I hope would be of assistance to you in determining this case. I would also like to present at this time for the record, three original Hull Insurance Policies covering the 3 vessels in this claim which were in effect at the time of the commandeering of the vessels.

MAJOR MADDEN: This record may be submitted as Exhibits 1, 2, and 3.

MR. ANDERSON: I would also like to submit to the Commission a letter signed by Mr. A. S. Gutreich, dated June 15, 1948 in connection with the hull insurance policies on the three vessels.

MAJOR MADDEN: That would be marked as Exhibit No. 4.

MR. ANDERSON: In connection with the numbering of exhibits.

I would also request this time that you also number the three affidavits which I submitted to Colonel Eley yesterday and which I think are now on his desk.

MAJOR MADDEN: The affidavit of Mr. Kenneth B. Day will be marked as Exhibit 5; the affidavit of Geo Chong Kang as Exhibit 6; and the affidavit of Mr. James B. Anderson as Exhibit 7.

MR. ANDERSON: I would like to discuss at the present time the evidence in connection with the valuation of the ships which is now on record before this Commission. I have attempted too in my memo a break-down under several headings. If I may, I will discuss them in the same order present in the memo. I wanted to elaborate this and point out to you that they are extremely important. I would also like to discuss several of these things if you want me to. Attached to the affidavit of Mr. Geo Chong Kang, the General Manager of this company our itemized statements of earnings of each of the ships during 1941. I understand that the net earnings of each of the three ships is important with the determination of the value of the ships. That is the reason why I like to state this. It is important because it was taken directly from the original records in Cebu. It was taken directly from those records and that has been attached to these affidavits. That, I believe, should receive a consideration and weight by the Commission.

MAJOR MADDEN: As far as I am concerned, I do not totally agree with you on this point.

MR. ANDERSON: I do not also want to argue, but I want to call your attention to the opinion written by Reconsideration Commission No. 62 in the Everett Steamship Corporation case. In that opinion, elements of valuation are set forth. I have attempted to submit to this Commission many of these things.

CAPTAIN MacBRIDE: I do not want to argue, but we are not judges. We do not consider an opinion of any commission in any other case.

MAJOR MADDEN: Your intention, Mr. Anderson, is to refer that as a guide.

MR. ANDERSON: The other point I would like to make at this time is that I strongly believe that the so-called Byrd Board of Surveys should be followed, unless there some particular and cogent reason why they should not be followed. The Byrd Board comprises of three well-known and respected individuals in Cebu, who were marine experts. They had opportunities to inspect the ships. There has never been anything to show that they were careless in their appraisals or anything which would lead this Commission to determine that their appraisals should not be followed. I have submitted appraisals of the American Bureau of Shipping and they are higher than the Byrd Board surveys. This appraiser is the manager of the Hongkong Dock and the direct builder of the ship "Princessa". I believe that all of the evidence I produced pretty well does away his appraisals. I also like to point out if it is true if he did not make a revised appraisal which takes away the value of original appraisals. The surveys of the Byrd Board should be honored because they are conservative surveys. If any of you gentlemen have a question, I have said everything I can say. I would appreciate it if you can get in touch with Mr. Nelson. I think you know about him.

MAJOR MADDEN: Do you have any question, Captain Grogan and Captain MacBride?

CAPTAIN GROGAN & CAPTAIN MacBRIDE: No.

MR. ANDERSON: Do you have any reason to believe that you would want to talk to Mr. Geo Chong Kang, the Manager of our company who is now in Manila. He wanted to go back to Cebu soon. And one more thing, I want to point out that the affidavits submitted by Mr. Geo Chong Kang to testify the construction costs on the ship "Princesa". I like to point out partially that I have been able to substantiate that, in connection with the board in Agusan substantiated by Mr. Kenneth B. Day, one of the most substantial people in Manila.

There being no further questions, the Commission then adjourned the meeting at the call of the President, on the same afternoon, 16 June 1948.

HEAD-QUARTERS
PHILIPPINES RYUKYU COMMAND
OFFICE OF THE CHIEF OF CLAIMS SERVICE

PROCEEDING NO. CC 5-X-4851 : Type: Procurement
Claimant: INSULAR NAVIGATION : Place Where Claim Arose: Cebu City,
COMPANY, a Corporation. : Cebu, Philippines.
Amount Claimed: ₱541,999.96 : Date Presented: 30 August 1945
(\$270,999.98) : Date Determined: 2 January 1947
Amount Approved: ₱400,250.00 : Date Re-Determined: 18 June 1948
(\$200,125.00)

DETERMINATION OF CONTRACT CLAIMS COMMISSION
FOR RECONSIDERATION NO. 89

1. Pursuant to the authority contained in Letter Order AG 180, 30 September 1946, JA, GMA, APPAC; APPAC Regulations 25-20, GMA, APPAC, 5 October 1946; First War Powers Act of 1941 (Public Law No. 354, 77th Congress); Executive Order No. 9001, 27 December 1941; WD Circular 53, 21 February 1946; Par 3, SO 160, 16 November 1945, GMA, APPAC; and par 4, SO 260, 12 November 1946, Hq AFMSPAC; and par 1, SO 23, 12 April 1948, Hq PHILRYCOM, Office of the Chief of Claims Service, Contract Claims Commission for Reconsideration No. 89 has made the following determination:

a. That the attached claim of INSULAR NAVIGATION COMPANY, a Corporation, against the United States of America is within the jurisdiction of this Commission under the above authority.

2. FINDINGS OF FACT:

a. Contract Claims Commission No. 5 under date of 2 January 1947 entered two determinations approving the within claims to the extent of ₱225,000.00 and ₱40,000.00.

b. Claim was filed on 30 August 1946 in the amount of ₱541,999.96 for the value of three ships, namely: "Princessa", "Katipunan", and "Condessa", and rental value for same; requisitioned and commandeered by the United States Army on January, 1942 at Cebu City, Cebu, Philippines.

Claim was determined by Contract Claims Commission No. 5 of this Claims Service and allowed on the sums above set forth on 2 January 1947. In their letter of 12 March 1948 claimants requested reconsideration of their claims which have been assigned to this Contract Claims Commission for Reconsideration. Reconsideration was requested on the ground of manifest mistake of fact and law plus the submitting of new and material evidence which the Commission finds are well taken and by reason thereof, the action taken by the above named contract claims commission is hereby vacated, set aside, and held for naught.

c. That on or about 1 January 1942 at Cebu City, Cebu, Philippines, the motorship "Princessa" was, with the owner's consent, requisitioned by

the United States Armed Forces in the Far East. This vessel was scuttled on 10 April 1942.

On 3 January 1942, at Cebu City, Cebu, Philippines, the motorship "Katipunan", was, with the owner's consent, requisitioned by the United States Armed Forces in the Far East and on 3 May 1942, said vessel was scuttled.

That on 24 January 1942 at Cebu City, Cebu, Philippines, the motorship, "Condessa" was, with the owner's consent, requisitioned by the United States Armed Forces in the Far East and on 14 May 1942, said vessel was scuttled. Title to the above vessels was vested in the United States on 3 January 1942 and on 24 January 1942, the dates of requisitioning.

The award of this Commission is based on the fair and reasonable value of the vessels at the time and place of requisitioning which is the sum of \$349,250.00.

That the amount justly due and owing to the above claimant by the United States of America for rental of the above vessels from January 1942 to April 1942 is \$51,000.00, no part of which has been paid.

That the total amount of the award for the three above-mentioned vessels plus their rental from January to April 1942 is \$400,250.00.

d. That the property procured was necessary to facilitate the prosecution of the war.

e. That the amount justly due and owing to the above claimant is \$400,250.00 (\$200,125.00), which sum is payable by the United States of America; that no part of said amount has been paid. Because of procedural irregularities, payment cannot readily be effected through normal finance procedure.

3. WHEREFORE, the foregoing claim is approved in the amount of \$400,250.00 (\$200,125.00), which sum is payable by the United States of America. This Determination of Commission when approved by the Commanding General, PHILRYCOM, together with attached claim form containing a release executed by claimant, will constitute authority for payment of this claim from current funds in the amount above determined.

CONTRACT CLAIMS COMMISSION
FOR RECONSIDERATION NO. 89

s/ John J. Madden
t/ JOHN J. MADDEN, Major, JAGD, President

I CONCUR: _____ June 1948.

s/ Francis J. Grogan
t/ FRANCIS J. GROGAN, Capt, JAGD, Member

WILLIAM S. ELBY
Colonel, Infantry
Chief of Claims Service

s/ Bernard E. MacBride
t/ BERNARD E. MacBRIDE, Capt, JAGD, Member

HEADQUARTERS, PHILRYCOM, APO 707

21 JUN 1948

1948

Approved and payment to INSULAR NAVIGATION COMPANY, a Corporation, authorized in the amount of \$400,250.00 (\$200,125.00).

STATEMENT OF INCOME & EXPENSES
FOR THE YEAR 1941

	MV "PRINCESA"			MV "KATIPUNAN"			MV "CONDESA"		
	PASSAGES	FREIGHT	TOTAL REVENUE	PASSAGES	FREIGHT	TOTAL REVENUE	PASSAGES	FREIGHT	TOTAL REVENUE
1. Month of: Jan	4,565.04	10,497.34	15,062.38	2,047.41	4,782.58	6,829.99	1,357.61	8,268.93	9,626.54
2. Feb	2,157.95	5,911.09	8,069.04	1,257.55	3,779.75	5,037.30	1,523.18	7,197.35	8,720.53
3. Mar	3,542.91	7,747.74	11,290.65	1,680.43	5,084.41	6,764.84	1,799.63	6,209.10	8,008.73
4. Apr	4,939.93	7,788.16	12,728.09	2,592.62	5,058.11	7,650.73	2,695.18	5,923.05	8,618.23
5. May	5,325.80	9,614.38	14,940.18	2,591.13	5,903.32	8,494.45	2,717.85	7,971.53	10,699.38
6. Jun	5,631.34	8,249.80	13,881.14	1,792.71	4,708.72	6,501.43	3,408.93	9,524.17	12,933.10
7. Jul	6,226.12	10,827.59	17,053.71	1,947.13	5,882.87	7,830.00	1,848.08	8,893.24	10,741.32
8. Aug	4,705.20	12,361.56	17,066.76	2,017.26	5,527.98	7,545.24	1,695.34	7,916.93	9,612.27
9. Sep	6,338.54	13,119.14	19,457.68	1,736.07	6,263.64	7,999.71	2,284.94	9,994.77	12,279.71
10. Oct	7,293.75	13,673.25	20,967.00	2,604.70	9,537.16	12,141.86	2,336.58	11,009.98	13,346.56
11. Nov	6,307.71	12,195.19	18,502.90	2,423.91	5,891.36	8,315.27	1,693.89	9,062.39	10,756.28
12. Dec	6,735.15	6,193.53	12,928.68	2,777.85	2,828.36	5,606.21	4,735.84	7,360.12	12,095.96
TOTAL REVENUES	63,769.44	118,178.77	181,948.21	25,468.77	65,248.26	90,717.03	28,097.05	99,331.56	127,428.61
LESS: RETURNS & ALLOWANCES--			2,592.76			935.05			3,427.90
NET TOTAL REVENUES			179,355.45			89,781.98			124,000.71
DEDUCT: DIRECT OPERATING EXPENSES									
1. Repairs & Renewals		7,490.68			4,739.95			2,748.25	
2. Salaries & Wages of Crews		30,893.07			17,891.32			24,622.81	
3. Subsistence of Crews		6,281.25			2,730.75			4,800.00	
4. Subsistence of Passengers		5,894.28			2,674.36			2,810.39	
5. Fuel		24,739.65			13,037.16			14,740.62	
6. Lubrication		3,574.71			3,029.53			3,476.14	
7. Water		296.40			334.50			487.20	
8. Other Supplies & Expenses		5,058.85			3,414.49			3,905.96	
9. Stevedore & Wharf Labor		13,497.82			5,531.61			13,255.84	
10. Pilotage, Towing & Dockage		1,872.37			2,174.88			892.32	
11. Loss & Damage-Freight & Baggage		816.57			879.10			263.85	
12. Injuries to Persons		0.00			0.00			25.99	
13. Commission		5,417.88			2,011.36			839.14	
14. Telegraphs, Cable & Radio		62.17			75.58			89.56	
15. Insurance		3,689.97			2,600.46			2,125.60	
16. License & Inspection Fees		438.94			188.50			182.39	
17. Miscellaneous Direct Operating Exps		4,630.99			1,087.90			1,165.86	
TOTAL DIRECT OPERATING EXPENSES			114,088.60			61,201.45			76,431.82
NET PROFIT ON OPERATION			65,266.85			28,580.53			47,568.89

Cebu City, Mar. 20, 1942
CERTIFIED TRUE & CORRECT

INSULAR NAVIGATION COMPANY

BY *[Signature]*
GO HONG KANG
General Manager

DECLASSIFIED
Authority NND 883078

ROYAL AIR FORCE OPERATIONAL RECORDS