

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

IN THE MATTER OF THE CLAIM OF

CHARLES P. COADY, JR.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0178

Decision No. CU 2102

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by CHARLES P. COADY, JR., and is based on the asserted loss of his interests in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since birth.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claim is presented for an interest in bonds, issued by the Cuba Railroad Company and known as First Mortgage Gold Bond, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos M 477 through M 484 and 7314 and 7315.

Pursuant to the Supplemental Indenture of July 1, 1952, the bonds are over stamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

On the basis of evidence of record, the Commission finds that claimant acquired two of the above-numbered bonds on February 17, 1961 for \$102.70, and purchased the remaining eight bonds on February 21, 1961 for \$489.80.

The record discloses that Cuba Railroad Company was owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba). They were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Consolidated Railroads was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Moreover, although Cuba Railroads was organized in New Jersey, it is wholly owned by Consolidated Railroads and does not qualify as a national of the United States under Section 502(1)(B) (supra). (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

In this type of situation it has been held previously that a claimant is entitled to file a claim based upon such bonds which represent debts of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Joseph Gans, Claim No. CU-1720).

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960 and claimant did not acquire the subject securities until February, 1961. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant purchased them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$592.50 (the price he paid) as a result of the nationalization of the Cuba Railroad on October 13, 1960.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644).

The Commission concludes however that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the date of purchase, to the date on which provisions are made for settlement thereof, as follows

From February 17, 1961 as to	\$102.70
From February 21, 1961 as to	489.80
	<hr/>
	\$592.50

CERTIFICATION OF LOSS

The Commission certifies that CHARLES P. COADY, JR., 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 Five Hundred Ninety-Two Dollars and Fifty Cents (\$592.50) with interest thereon at 6% per annum from the date of purchase to the date of settlement.

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

JUL 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)