

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

IN THE MATTER OF THE CLAIM OF

GREAT AMERICAN INSURANCE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0517

Decision No. CU

3558

Counsel for claimant:

Shearman & Sterling
By John V. Murray, Esq.

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 GREAT AMERICAN INSURANCE COMPANY, in the amount of \$219,268.96 based upon asserted losses in connection with a bank account, certain Cuban Government bonds and a debt due from its Cuban agents.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government

of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of claimant corporation has certified that claimant was organized in the State of New York, and that at all pertinent times more than 50% of the outstanding capital stock of claimant has been owned by United States nationals. Another officer of claimant has certified that less than 1% of claimant's outstanding capital stock was owned by persons residing outside the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes: (1) certificates from the Treasury Department of the Government of Cuba evidencing the receipt of bonds from claimant; (2) a letter from the Chase Manhattan Bank, Havana, Cuba, evidencing claimant's bank account in Cuba; (3) a reconciliation statement from claimant's agents in Cuba showing claimant's bank balance as of September 30, 1960; (4) copies of reports from claimant's agents evidencing debts due claimant; (5) extracts from accounts maintained by claimant's agents in Cuba; and (6) affidavits from officers of claimant explaining the various elements of the claim.

On the basis of the entire record, the Commission finds that claimant owned certain assets in Cuba; namely, a bank account with the Chase Manhattan Bank, Havana, Cuba; bonds in the face amount of \$125,500.00 of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977; and debts due from its Cuban agents.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the GREAT AMERICAN INSURANCE COMPANY. The Commission finds that claimant's assets in Cuba were nationalized by the Government of Cuba on October 24, 1960 within the meaning of Title V of the Act.

Bank Account and Bonds

The record shows that claimant's bank account with the Chase Manhattan Bank, Havana, Cuba, had a balance of 179,108.34 pesos as of August 31, 1960. However, it appears that deposits were made during September 1960 in the amount of 4,136.99 pesos, and that withdrawals during September 1960 as well as outstanding checks aggregated 16,025.58 pesos. Accordingly, the Commission finds that claimant's balance was 167,219.75 pesos, and had a value of \$167,219.75 on October 24, 1960, the date of loss.

The evidence of record establishes that claimant had on deposit with Cuban authorities bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, in the face amount of \$125,500.00. The Commission finds that the amount of the unpaid indebtedness on claimant's bonds on October 24, 1960 was \$125,500.00.

Other Debts

Claimant had entered into a contract with a certain concern in Cuba which was thereby designated to act as claimant's agent in Cuba with authority to accept and decline insurance risks, collect premiums, pay losses, adjust and compromise claims, and perform other necessary acts

in these respects. These agents rendered statements to claimant indicating net amounts due claimant after all appropriate deductions for expenses and commissions. The record shows that the net amount of the debts due claimant on the date of loss was \$25,065.32. However, claimant has stated that the said net amount includes debts due from three corporations organized under the laws of certain American States and qualifying as United States nationals, in the aggregate amount of \$178.13. That these three debtor corporations qualify as United States nationals is confirmed by the records of the Commission.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Accordingly, the portion of the claim for \$178.13 can be considered only if these claimed debts were charges upon property nationalized, expropriated, intervened or taken by the Government of Cuba.

Claimant has neither alleged nor submitted evidence to establish that these debts in the amount of \$178.13 were charges upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore, the Commission is without authority to consider this portion of the claim, and it is hereby denied. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

The Commission therefore finds that on October 24, 1960 the aggregate amount of debts due claimant was \$24,887.19.

Deductions

Claimant has reduced the amount of its claim by \$77,900.27, representing \$37,898.27 for unearned premiums and \$40,002.00 for estimated losses sustained by its assureds as of the date of loss herein. It asserts that "As unearned premiums are a liability, they are deductible from assets in order to determine the net worth of the business." With respect to the \$40,002.00, which claimant also considers a liability, claimant states that it "represents the estimated unpaid losses on the date of loss."

It is noted that claimant is an American corporation and the claim is for the nationalization of its assets in Cuba and not the taking of a Cuban corporation. The claimant is therefore entitled to recover in full for the seizure of its assets less the value of setoffs such as taxes due to the Cuban Government or valid liens against the Cuban assets. Of course, the American corporate claimant is at all times liable to its policyholders for unearned premiums collected and losses on insurance in force. These liabilities to Cuban policyholders are still enforceable against the claimant even though the Cuban assets are no longer available.

The claimant therefore is entitled to recover in full for these two items.

On the basis of the entire record, the Commission finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$317,606.94.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

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

CERTIFICATION OF LOSS

The Commission certifies that the GREAT AMERICAN INSURANCE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Seventeen Thousand Six Hundred Six Dollars and Ninety-four Cents (\$317,606.94) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

MAR 18 1969

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 for 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).)