

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

IN THE MATTER OF THE CLAIM OF

MARION K. SMITH

Claim No. CU-0781

Decision No. CU

3115

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MARION K. SMITH and is based upon the asserted loss sustained in connection with the ownership of a participation interest in the Cuban Venezuelan Oil Voting Trust. Claimant, MARION K. SMITH, has been a national of the United States since birth.

As is fully set forth in the original decision involving the Cuban Venezuelan Oil Voting Trust (see Claim of Felix Heyman, Claim No. CU-0412, which is hereby incorporated herein and made a part thereof by reference), the properties owned or controlled by the Trust were nationalized or otherwise taken by the Government of Cuba on November 23, 1959; the Commission also found that this type of claim for loss of a stock ownership is compensable under the conditions and facts set forth in Heyman. There is no need to again detail herein the reasons for such a determination or the method arrived at in determining the value per unit of participation which comes to \$0.11971 per unit.

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 loss of units of participation in the Cuban Venezuelan Oil Voting Trust. On the basis of the evidence of record, the Commission finds that the late Gladys B. Smith, wife of claimant herein and a national of the United States at all times pertinent to this claim, acquired 1,000 units of participation in the Cuban Venezuelan Oil Voting Trust on December 31, 1959, for a consideration of \$187.50; and that Gladys B. Smith died testate on August 6, 1962, and claimant herein inherited the units of participation at the time of her death. The certificate in question is No. NY 117568.

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 November 23, 1959. 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 the aforesaid decedent acquired the units of participation.

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 decedent, 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 herein, upon inheriting the securities, subject of this claim, succeeded to the loss sustained by the assignor (decedent) of the claimed securities. The Commission also finds, however, that the loss of the decedent is limited to the sum of \$119.71, or \$0.11971 per unit, which is the value of the units of participation at the time that the Cuban Venezuelan Oil Voting Trust was taken by the Government of Cuba.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC 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 December 31, 1959, the date on which the decedent acquired this claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MARION K. SMITH succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Nineteen Dollars and Seventy-one Cents (\$119.71) with interest at 6% per annum from December 31, 1959 to the date of settlement.

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

SEP 25 1960

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).)