

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

IN THE MATTER OF THE CLAIM OF

THE AMERICAN GENETIC ASSOCIATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -1072

Decision No. CU 1238

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 THE AMERICAN GENETIC ASSOCIATION, in the amount of \$1,397.00, in connection with a bond known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977.

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) of the Act defines the term "national of the United States" as "(B) 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 the claimant corporation has certified that the claimant was organized in the District of Columbia and that at all times between December 31, 1960 and presentation of this claim on March 1, 1967, more than 50% of the members of the claimant were United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 91% of its 1,419 members were nationals of the United States.

On the basis of evidence of record, the Commission finds that claimant is, and since 1938 has been, the owner of two bonds of the issue known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977, one bearing No. M 76488, in the principal amount of \$1,000.00, with 33 interest coupons attached, each in the amount of \$22.50, payable semi-annually, the earliest maturing on June 30, 1961, and the latest on June 30, 1977, and the other bond bearing No. C 5856, in the principal amount of \$100.00, with 33 interest coupons, each in the amount of \$2.25. Such a bond, as a "debt owed by the Government of Cuba," clearly constitutes property within the meaning of the term as defined in Section 502(3) of the Act, quoted above.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (see Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p. 52), but other than continued failure to make payments under its obligation, has taken no positive action concerning the rights of bondholders. The question arises whether such nonpayment may be deemed a nationalization, expropriation, intervention, or other taking of, or special measures directed against the property of the bondholder within the meaning of Section 503(a) of the Act.

The Commission has held that the failure of the Government of Cuba to make the obligated payment on December 31, 1960, even without express repudiation of the bonds, occurring, as it did, for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gives rise to a valid claim for the amount of the unpaid indebtedness as of that date. (See the Claim of Clemens R. Maise, FCSC Claim No. CU-3191.)

The Commission finds that the amount of the unpaid indebtedness on claimant's bonds on December 31, 1960, the date of loss, was \$1,124.75, including the principal amounts of \$1,000.00 and \$100.00 and the interest due on December 31, 1960 in the amounts of \$22.50 and \$2.25.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 31, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE AMERICAN GENETIC ASSOCIATION suffered a loss, as a result of action 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 Thousand One Hundred Twenty-Four Dollars and Seventy-Five Cents (\$1,124.75) with interest thereon at 6% per annum from December 31, 1960 to the date of settlement.

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

FEB 14 1968

RECEIVED  
MAR 18 1968  
This is a true and correct copy of the Proposed Decision of the Commission which was entered as the Proposed Decision of the Commission on FEBRUARY 14, 1968.

*Edward S. Re*

Edward S. Re, Chairman

Theodore Jaffe, Commissioner

*Theodore Jaffe*  
Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The above listed bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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).)