

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

IN THE MATTER OF THE CLAIM OF

FACTORY INSURANCE ASSOCIATION

Claim No. CU-1523

Decision No. CU - 2995

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, in the amount of \$34,185.58 was presented by FACTORY INSURANCE ASSOCIATION based upon the asserted loss of a debt.

Under Title V of the International Claims Settlement Act of 1949, as amended [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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in Connecticut and that at all times between January 1, 1959 and presentation of this claim on April 17, 1967 more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. An officer of claimant has stated that 14% of its outstanding shares of stock is owned by nonnationals of 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.

It appears from the evidence of record that claimant entered into an underwriting agreement with a group of insurance companies known as the Latin American Pool so that insured risks were distributed among the members of the Pool in accordance with the agreement. Certain losses were sustained by claimant in connection with these risks, and all but the sum of \$32,137.08 due from members of the Pool pursuant to the agreement was received by claimant.

The record discloses that the members of the Latin American Pool were intervened by Resolution No. 473 pursuant to Law 899, published in the Cuban Official Gazette on October 14, 1960. The several members of the Pool were organized under the laws of Cuba and do not qualify as "nationals of the United States" defined in Section 502(1)(B) of the Act (supra). Claimant is therefore entitled to file this claim based upon debts of intervened enterprises within the purview of Section 502(3) of the Act. (See Claim of Edward R. Smith, Claim No. CU-5001.)

Based upon the evidence of record, the Commission finds that claimant was owed the sum of \$32,137.08 by members of the Latin American Pool and that, because of the act of the Government of Cuba on October 14, 1960 in intervening these members, claimant was unable to collect these debts. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$32,137.08 within the meaning of Title V of the Act as a result of actions 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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 14, 1960, the date on which the loss occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that FACTORY INSURANCE ASSOCIATION 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 Thirty-two Thousand One Hundred Thirty-seven Dollars and Eight Cents (\$32,137.08) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 4 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)