

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

IN THE MATTER OF THE CLAIM OF

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1593

Decision No. CU 786

Counsel for claimant:

Davis, Polk, Wardwell, Sunderland  
& Kiendl

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$31,689.40, was presented by MORGAN GUARANTY TRUST COMPANY OF NEW YORK, based upon debts assertedly due from an enterprise nationalized by the Government of Cuba.

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 which was organized in the State of New York has certified that at all times between the date of loss and presentation of this claim on April 18, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by 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 0.902% of its capital stock was registered in the names of persons who have resident addresses outside the United States.

This claim is based upon services rendered to the Cuba Railroad Company by claimant, as Trustee, pursuant to a Supplementary Indenture dated July 1, 1952 and by a second Supplemental Indenture dated October 1, 1959.

The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act which defines the term "national of the United States" as including (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 . . . .

The Cuba Railroad Company was listed as nationalized by Law 890, published in the Cuban Official Gazette on October 13, 1960. The Cuban Administrator of the Consolidated Railroads of Cuba dispensed with the services of claimant as of November 24, 1960.

Claimant presented bills to The Cuba Railroad Company in varying amounts from January 23, 1959 through January 23, 1967, totalling \$30,934.27. However only the bills amounting to \$13,323.79 incurred prior to the date of nationalization have been considered.

Accordingly, it is concluded that claimant suffered a loss in the amount of \$13,323.79 within the meaning of Title V of the Act as a result of the nationalization of the property of The Cuba Railroad Company by the Government of Cuba on October 13, 1960.

The portion of the claim based upon asserted indebtednesses levied by the claimant against The Cuba Railroad Company subsequent to the date of nationalization of said company are not compensable under the Act and accordingly are denied.

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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MORGAN GUARANTY TRUST COMPANY OF NEW YORK 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 Thirteen Thousand Three Hundred Twenty-Three Dollars and Seventy-Nine Cents (\$13,323.79) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

6 DEC 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

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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).)