

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

IN THE MATTER OF THE CLAIM OF

UNITED STATES FIRE INSURANCE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1702

Decision No. CU 3588

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 \$207,081.05, was presented by UNITED STATES FIRE INSURANCE COMPANY based upon the asserted loss of certain personal property in 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)(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 authorized officer of claimant has certified that claimant was organized under the laws of the State of New York; that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States; and that as of November 1960, .11% of claimant's outstanding capital stock was held 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.

The record shows that claimant carried on an insurance business in Cuba through an agent, a Cuban national. The evidence includes Certificate No. 38, for 2 shares of stock of Financiera Nacional de Cuba, with a par value of 100 pesos, equivalent to \$100.00 for each share; copies of receipts from the Cuban Treasury Department, evidencing claimant's deposit of certain 4% Cuban Government bonds; an extract from claimant's records concerning a debt due from its agent in Cuba; bank letters concerning claimant's bank deposits in Cuba; affidavits and statements from officials of claimant with respect to this claim; and pertinent extracts from claimant's income tax return for 1960.

On the basis of all the evidence of record, the Commission finds that claimant owned certain personal property in Cuba; namely, 2 shares of stock of Financiera Nacional de Cuba, having an aggregate face value of \$200.00; 100 bonds of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, in the aggregate face amount of \$100,000.00; bank deposits at the Royal Bank of Canada, Havana, Cuba Branch; and a debt due from claimant's agent in Cuba.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized UNITED STATES FIRE INSURANCE COMPANY. The Commission finds that all of claimant's assets in Cuba, except as noted below, were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Personalty	\$ 81,047.55
Securities	101,357.50
Debts	<u>24,676.00</u>
Total	<u>\$ 207,081.05</u>

The claim for \$81,047.55 includes bank deposits in the amount of \$78,796.25 and interest thereon for 6 years beginning on the date of loss in the amount of \$18,954.30, less certain deductions for outstanding losses and unearned premiums, which will be discussed below.

A letter from the New York Branch of the Royal Bank of Canada, dated November 28, 1960, states that the aggregate credit in claimant's favor in its Havana, Cuba Branch as of October 25, 1960 was \$79,563.75, in Cuban pesos, the peso being on a par with the United States dollar. Claimant has explained, however, that certain adjustments were made to arrive at a cash book balance of \$78,796.25, as claimed, on the date of loss. The Commission therefore finds that claimant's bank deposits in Cuba aggregated the amount of \$78,796.25 on October 24, 1960, the date of loss.

Claimant's 4% Cuban Government Veterans, Courts and Public Works bonds, due 1983, had a face value of \$100,000.00. Records available to the Commission disclose that the Cuban Government first defaulted in the payment of interest on these bonds on May 1, 1961. (See Claim of Westchester Fire Insurance Company, Claim No. CU-1703.) The Commission therefore finds that on October 24, 1960 the Government of Cuba was indebted to claimant with respect to these bonds in the amount of \$100,000.00 and that no interest was due on that date.

The amount claimed for securities, \$101,357.50, includes \$101,157.50 for the foregoing 4% Cuban Government bonds and \$200.00 for 2 shares of stock of Financiera Nacional de Cuba.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders in this entity. The Commission found that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its liabilities were assumed by Cuba; and that a claim for such loss arose on August 17, 1960 under Title V of the Act. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.) The Commission finds that on August 17, 1960 the amount of Cuba's indebtedness to claimant on account of its 2 shares of Financiera Nacional de Cuba was \$200.00.

The Commission finds on the basis of the evidence of record that on the date of loss, October 24, 1960, claimant owned an account receivable due from a Cuban national in the amount of \$676.00.

Deductions

Claimant has reduced the amount of its claim by \$16,883.00, representing \$12,201.00 for unearned premiums and \$4,682.00 for outstanding losses.

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

Based on all the evidence of record, the Commission finds that the aggregate amount of loss sustained by claimant within the meaning of Title V of the Act was \$179,672.25.

Claim has also been made for interest on the bank deposits in the amount of \$18,954.30 and \$24,000.00 on the Cuban Government bonds, for a period of 6 years beginning on the date of loss. The Commission, however, has formulated its own rule as to interest and 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, as follows:

<u>FROM</u>	<u>ON</u>
August 17, 1960	\$ 200.00
October 24, 1960	179,472.25

CERTIFICATION OF LOSS

The Commission certifies that UNITED STATES FIRE 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 One Hundred Seventy-nine Thousand Six Hundred Seventy-two Dollars and Twenty-five Cents (\$179,672.25) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

APR 2 1969

Lamont B. Smith
~~LAMONT B. SMITH, CHAIRMAN~~
Theodore Jaffe
~~THEODORE JAFFE, COMMISSIONER~~
Sidney J. Friedman
~~SIDNEY J. FRIEDMAN, 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).)