

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

IN THE MATTER OF THE CLAIM OF

WESTCHESTER FIRE INSURANCE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1703

Decision No. CU

3485

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 WESTCHESTER FIRE INSURANCE COMPANY in the amount of \$55,792.35, based upon the asserted loss of certain bonds of the Government of Cuba, a bank account, a debt due from its Cuban agent, and interests in Financiera Nacional de 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.

The record shows that claimant was organized in the State of New York. Claimant Company, by an authorized officer, has certified that at all pertinent times more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States, and that as of November 1960, 99.73% of its outstanding capital stock was 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.

Evidence available to the Commission establishes that claimant's insurance business in Cuba was nationalized on April 28, 1964 pursuant to Resolution 1032 issued pursuant to Law 890.

The record includes extracts from claimant's books; statements from claimant's agent and its attorney-in-fact concerning the debts due from claimant's Cuban agent, through whom claimant conducted its insurance business in Cuba; receipts from the Cuban Treasury Department evidencing claimant's ownership of Cuban Government bonds of the issue known as Veterans, Courts, and Public Works, in the face amount of \$25,000.00; certificates evidencing claimant's ownership of 3 shares of Financiera Nacional de Cuba; statements from the Royal Bank of Canada, Havana, Cuba Branch; and statements from claimant's officers concerning the items claimed herein.

On the basis of the entire record, the Commission finds that claimant owned certain assets in Cuba; namely, bonds of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, in the aggregate face amount of \$25,000.00; a bank account with the Royal Bank of Canada, Havana, Cuba Branch; a debt due from its Cuban agent, Garcia, Ordonez, Enriquez & Alvado, Havana, Cuba; and 3 shares of stock of Financiera Nacional de Cuba having a face value of \$100.00 per share.

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 of this entity. The Commission held that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its assets were assumed by Cuba; and that a claim for such loss arose under Title V of the Act on August 17, 1960, the date of liquidation. (See Claim of Phoenix Fire Insurance Company, Claim No. CU-1913.)

The Commission finds that the unpaid debt owing to claimant on August 17, 1960 on account of its interests in Financiera Nacional de Cuba was \$300.00.

As indicated above, claimant owned 25 bonds in the face amount of \$1,000.00 each, known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983. These bonds, being debts owed by the Government of Cuba, clearly constitute property within the meaning of Section 502(3) of the Act.

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 May 1, 1961. (See Foreign Bondholders Protective Council, Inc., Report for Years 1958 through 1961, p. 52.)

The Commission has held that the failure of the Government of Cuba to make an obligated payment, even without express repudiation of the bonds, occurring 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 gave rise to a claim for the amount of the unpaid indebtedness as of that date. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

The Commission therefore finds that in this case the default by Cuba on May 1, 1961 gave rise to a claim within the meaning of Title V of the Act.

Claimant's bonds had an aggregate face value of \$25,000.00. These bonds carried coupons for interest in the amount of \$20.00 each payable semiannually on May 1 and November 1 of each year until maturity on November 1, 1983. The record shows that interest was last paid on November 1, 1960. The Commission therefore finds that as of May 1, 1961, the date of loss, the Government of Cuba owed claimant the amount of \$25,500.00, representing \$25,000.00 in principal and \$500.00 in interest.

The Commission finds on the basis of the evidence of record that claimant had a credit balance with the Royal Bank of Canada, Havana, Cuba Branch, in the amount of 5,983.53 pesos on April 28, 1964, equivalent to \$5,983.53; and further, that claimant's Cuban agent owed claimant a debt in the net amount of \$16,832.78 as of April 28, 1964, and that these assets were taken by the Government of Cuba on April 28, 1964 within the meaning of Title V of the Act.

Accordingly, the Commission finds that the aggregate amount of claimant's losses was \$48,616.31.

Claimant has claimed interest with respect to its bank account and its Cuban Government bonds for a period of six years from November 1960 to November 1966 at the rate of 4%. As indicated herein, interest on claimant's

bonds for the period following November 1, 1960, the last time interest was paid, until May 1, 1961, the date of loss, is being certified in favor of claimant. No evidence having been submitted to establish the amount, if any, of interest due on claimant's bank account as of the date of loss, no amount for interest up to April 28, 1964 is being included in the certification.

However, with respect to the period of time after August 17, 1960, when claimant's interest in Financiera Nacional de Cuba was lost, and the periods after May 1, 1961 and April 28, 1964, when claimant's other losses herein were sustained, 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

| <u>On</u> | <u>From</u>     |
|-----------|-----------------|
| \$ 300.00 | August 17, 1960 |
| 25,500.00 | May 1, 1961     |
| 22,816.31 | April 28, 1964  |

CERTIFICATION OF LOSS

The Commission certifies that WESTCHESTER 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 Forty-eight Thousand Six Hundred Sixteen Dollars and Thirty-one Cents (\$48,616.31) 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

JAN 23 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Goldberg*

Sidney Goldberg, 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).)