

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

IN THE MATTER OF THE CLAIM OF

CHARLES EVERETT MacMAHON

Claim No. **CU** -1877

Decision No. **CU** -1497

Under the International Claims Settlement
Act of 1949, as amended

ORDER AND AMENDED PROPOSED DECISION

By Proposed Decision dated April 10, 1968, the Commission denied this claim based on 3% Cumulative Income Debentures issued by the Consolidated Railroads of Cuba for the reason that claimant had failed to establish ownership of rights and interests in property by a national of the United States which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thereafter, claimant submitted additional information and evidence. Upon consideration of this matter, it is

ORDERED that the Proposed Decision be and the same is hereby amended as follows:

In our decision entitled the Claim of Edward R. Smith (Claim No. CU-5001 which we incorporate herein by reference), we held that the properties of the Railroad were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$5,000 bond of \$5,945.41 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Smith decision; that he was an American national at the requisite times; that

he has been the owner of 3% Income Debentures in the total face amount of \$26,000.00 since prior to October 13, 1960; and that he suffered a loss in the amount of \$30,916.13 within the meaning of Title V of the Act.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claim is also presented for additional bonds of a face value of \$10,000.00.

On the basis of evidence of record, the Commission finds that claimant acquired the last \$10,000.00 of bonds by purchase on April 17, 1961 for a consideration of \$451.50.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960. In similar cases claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities in the amount of \$10,000.00, but under the limitations provided in Section 507 of the Act (supra), is limited to \$451.50 the actual consideration paid for these bonds.

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.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from April 17, 1961, the date on which claimant acquired the claim as to \$10,000.00, to the date on which provisions are made for the settlement thereof, as follows:

<u>FROM</u>	<u>ON</u>
October 13, 1960	\$30,916.13
April 17, 1961	<u>451.50</u>
	\$31,367.63

CERTIFICATION OF LOSS

The Commission certifies that CHARLES EVERETT MacMAHON 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-one Thousand Three Hundred Sixty-seven Dollars and Sixty-three Cents (\$31,367.63) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

AUG 20 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 Amended 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).)

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1497

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 \$51,196.60 was presented by CHARLES EVERETT MACMAHON, and is based on his asserted interest in bonds issued by the Consolidated Railroads of Cuba. Claimant has been a national of the United States since his birth in the United States.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents... (FCSC Reg., 45 C.F.R. §531.3 (a) (Supp. 1967).)

Claimant asserts the ownership of 36 bonds issued by the Consolidated Railroads of Cuba; however, claimant has not submitted the original bond certificates in support of his claim. Claimant has submitted photocopies of stockbrokers' transaction slips indicating the purchase of a total of 36 bonds for the joint account of himself and his mother, and has also submitted a certified copy of his birth certificate.

By Commission letter of September 21, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Specifically, claimant was informed that the original bonds should be submitted. By letter of September 26, 1967, claimant advised the Commission that he had the bonds in his possession but that he would not submit them since he might wish to sell some to offset capital

gains. Thereafter, by letter of October 10, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence and claimant was informed that Commission regulations require the submission of the original certificates. By letter of October 19, 1967, claimant submitted photocopies of the transaction slips.

On January 8, 1968, claimant was invited to submit the original bond certificates within 30 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Although claimant has since corresponded with the Commission, no further evidence has been submitted.

The Commission therefore finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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