

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

IN THE MATTER OF THE CLAIM OF

PHOENIX INSURANCE COMPANY

Claim No. CU-1913

Decision No. CU 3179

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 \$149,041.86, was presented by PHOENIX INSURANCE COMPANY, based on the asserted losses in connection with a bank account; debts known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983; debts known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977; and interests in Financiera Nacional de Cuba.

This is the first claim involving the Financiera Nacional de Cuba.

The Commission notes that several other claims have also been filed with it by other stockholders; thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in Connecticut and that at all times pertinent to this claim more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States. This officer also has stated that since August 1, 1966 all of the outstanding capital stock of claimant was owned by The Travelers Corporation. An officer of The Travelers Corporation has certified that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals 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.

Financiera Nacional de Cuba

The Commission finds on the basis of the evidence of record that claimant owned 81 shares of stock in Financiera Nacional de Cuba. Evidence available to the Commission indicates that this entity was semi-public in

nature and that its purpose was to finance reproduction of works of public interest pursuant to Law Decree No. 1015 of August 11, 1953, under which it was organized. The entity was authorized to issue 40,000 shares of stock valued at \$100.00 for each share, and over 50% of the shares, representing the controlling interest, was owned by the National Bank of Cuba, an agency of the Government of Cuba. Moreover, the evidence indicates that the stock certificates sold to the public bore the statement that the Government of Cuba guarantees reimbursement of principal and accumulated dividends.

On their face the certificates appear to be shares of stock. However, it is clear that the Government of Cuba organized the entity for a public purpose, that the entity was controlled by Cuba, that only insurance companies and banks could purchase the securities, and that these securities were guaranteed by the Government of Cuba.

Upon careful consideration of this matter, the Commission holds that the securities issued in connection with Financiera Nacional de Cuba were not shares of stock of a corporation as that term is generally understood, but rather that they constituted debts owed by the Government of Cuba within the meaning of Section 502(3) of the Act.

Pursuant to Law No. 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all obligations in connection therewith were assumed by the Government of Cuba and provision was made for limited payments thereon. An authorized officer of claimant has stated under oath that claimant last received dividends on its shares on April 4, 1960 in the amount of \$405.00. The securities contained a clause providing for interest at the rate of 3% per annum.

The Commission finds that the liquidation of Financiera Nacional de Cuba and the failure of Cuba to continue honoring its debts gave rise to

a valid claim against Cuba for the amount of the unpaid indebtedness on August 17, 1960, the date of liquidation.

The Commission further finds that the amount of the unpaid debt owing to claimant on August 17, 1960, the date of loss, was \$8,189.78, including the principal amount of \$8,100.00 and interest due as of August 17, 1960 in the amount of \$89.78.

#### Bank Account and Bonds

The evidence of record establishes that claimant owned certain assets in Cuba; namely, a bank account with the Chase Manhattan Bank, Havana, Cuba; 49 bonds of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983; and 94 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1933-1977.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Phoenix Insurance Co. of Hartford. The Commission finds that claimant's said bank account and bonds were nationalized by the Government of Cuba on October 24, 1960 within the meaning of Title V of the Act. The record shows that claimant's account with the Chase Manhattan Bank, Havana, Cuba, had a balance of 33,880.24 pesos as of November 17, 1960. However, claimant has stated that it had two outstanding checks aggregating 4,094.78 pesos and five unrecorded deposits totaling 396.60 pesos. Accordingly, the Commission finds that claimant's balance was 30,182.06 pesos, and had a value of \$30,182.06.

The Commission finds that claimant's 49 bonds of the issue known as 4% Republic of Cuba Veterans, 1953-1983, had a face value of \$49,000.00. These bonds included provision for the payment of interest in the amount of \$20.00 semiannually on May 1 and November 1 for each bond.

An authorized officer of claimant has stated under oath that these bonds were last serviced on June 11, 1959 when interest in the amount of \$980.00 was received by claimant.

The Commission finds that the amount of the unpaid indebtedness on claimant's bonds on October 24, 1960, the date of loss, was \$50,960.00, including the principal amount of \$49,000.00 and interest in the amount of \$1,960.00.

The Commission finds that claimant's 94 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1933-1977, had a face value of \$94,000.00. These bonds included provision for the payment of interest in the amount of \$22.50 semiannually on June 30 and December 31 for each bond.

An authorized officer of claimant has stated under oath that these bonds were last serviced on September 3, 1959 when interest in the amount of \$2,160.00 was received by claimant.

The Commission finds that the amount of the unpaid indebtedness on claimant's bonds on October 24, 1960, the date of loss, was \$98,230.00, including the principal amount of \$94,000.00 and interest in the amount of \$4,230.00.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

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 it is so ordered,

CERTIFICATION OF LOSS

The Commission certifies that PHOENIX 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 Eighty-seven Thousand Five Hundred Sixty-one Dollars and Eighty-four Cents (\$187,561.84) with interest thereon 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

OCT 9 1968

*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 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).)