

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

IN THE MATTER OF THE CLAIM OF

IRWIN NACK
ETHEL NACK

Claim No. CU -1960

Decision No. CU

3234

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, was presented by IRWIN NACK and ETHEL NACK and is based upon an asserted loss sustained in connection with the ownership of preferred stock interests in The Cuba Railroad Company, and a stock interest in the United Cuban Oil Company, Inc. Claimants have been nationals of the United States at all times pertinent to this claim.

This is the first claim decided involving the preferred stock of The Cuba Railroad Company. The Commission notes that numerous other claims relating to the subject company have 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.

On the basis of evidence of record, the Commission finds that claimants are and, since prior to October 13, 1960, have been the owners of 30 shares of preferred stock, having a par value of \$100.00 each, of The Cuba Railroad Company.

The record discloses that The Cuba Railroad Company and the Consolidated Railroads of Cuba were nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. The Consolidated Railroads of Cuba, a corporation organized under the laws of Cuba, owned 100% of the common stock or 87.5% of the voting securities issued by The Cuba Railroad Company, a corporation organized under the laws of the State of New Jersey. Accordingly, The Cuba Railroad Company does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question, which represents an ownership interest in

the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record discloses that The Cuba Railroad Company authorized and had outstanding at the time of loss, two classes of stock-- (1) preferred stock of \$100.00 par value, and (2) common stock without par value. The preferred stock certificates set forth the rights of the preferred stockholders upon dissolution or final distribution of the assets as follows:

. . . upon the dissolution of the Corporation or the final distribution of its assets, after payment of its debts, shall be entitled to payment out of said assets to the amount of the par value of such preferred stock, before any division or payment to the holders of the common stock.

Evidence of record and other information available to the Commission disclose that the value of the real property, equipment, and other assets of The Cuba Railroad Company exceeded its total obligation on debts, bonds, and preferred stock par value.

Accordingly, in the instant claim, the Commission finds that claimants, as holders of 30 shares of the preferred stock of The Cuba Railroad Company, suffered a loss in the amount of \$3,000.00 within the meaning of Title V of the Act, as a result of the nationalization of The Cuba Railroad Company by the Government of Cuba on October 13, 1960.

Claim is also made based on an asserted loss sustained in connection with the ownership of a stock interest in the United Cuban Oil Company, Inc. Documentation submitted to the Commission by the United Cuban Oil Company, Inc., reflects that this company was incorporated under the laws of the State of Delaware. An

officer of the United Cuban Oil Company, Inc., has informed the Commission that over 50 per cent of the capital stock of said corporation is owned by United States citizens; United Cuban Oil Company, Inc., therefore qualifies as a corporate national of the United States as defined in Section 502(1)(B) (supra).

Section 505(a) of the Act provides that

A claim under Section 505(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered

The Commission concludes that Section 505(a) of the Act precludes the Commission from considering the portion of this claim based on the ownership of stock in the United Cuban Oil Company, Inc., and that portion of the claim is hereby denied. The Commission also notes that United Cuban Oil Company, Inc., has filed a claim.

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.

CERTIFICATION OF LOSS

The Commission certifies that IRWIN NACK and ETHEL NACK 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 Three Thousand Dollars (\$3,000.00) with interest 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

OCT 30 1960

Leonard V. E. Giffon
Leonard V. E. Giffon, Chairman

Theodore J. Freidberg
Theodore J. Freidberg, 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 claimants establish 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).)