

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

IN THE MATTER OF THE CLAIM OF

UNITED STATES TRUST COMPANY  
OF NEW YORK

Claim No. CU -2123

Decision No. CU-1675

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Carter, Ledyard & Milburn

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 UNITED STATES TRUST COMPANY OF NEW YORK for the amended amount of \$24,538.34, based upon expenses incurred and services rendered as trustee incidental to a bond issue of the Consolidated Railroads of 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 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 502(1) of the Act defines the term "national of the United States" as "(B) 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 officer of the claimant corporation, which was organized in the State of New York, has certified that at all times between the date of loss and presentation of this claim on April 26, 1967, more than 50% of the outstanding capital stock of the claimant has been 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.

Claimant states that on the asserted date of loss, October 13, 1960, approximately 0.38 per cent of its capital stock was registered in the names of persons who had resident addresses outside of the United States; and that at the time of filing this claim, on April 26, 1967, approximately 4.64 per cent of its capital stock was owned by persons residing outside of the United States.

This claim, in the amended amount of \$24,538.34, is based upon services rendered and expenses incurred by claimant, as Trustee, under an Indenture

by which certain bonds were issued by the Consolidated Railroads of Cuba, known as 3% Cumulative Income Debentures, due October 1, 2001.

Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), was a Cuban corporation. The Consolidated Railroads of Cuba thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including "(B) 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 discloses that the Consolidated Railroads of Cuba was listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960.

The record also establishes that claimant herein presented bills for its services and expenses to the Consolidated Railroads of Cuba in varying amounts from October 24, 1957, to the present time, totalling \$24,538.34; and that these bills were never paid. However, only the bills amounting to \$17,454.60, incurred prior to the date of nationalization of the Cuban enterprise, have been considered.

Accordingly, the Commission concludes that the unpaid bills in question, arising prior to nationalization of the Consolidated Railroads of Cuba, constituted a debt of the nationalized Cuban enterprise; and that claimant suffered a loss in the amount of \$17,454.60 within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, as a result of the nationalization of the Consolidated Railroads of Cuba on October 13, 1960. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec, 1966]).

The portion of the claim based upon the asserted indebtedness owed by the Consolidated Railroads of Cuba for services rendered and fees paid by claimant subsequent to the date of nationalization of said company are not compensable under the Act and accordingly are denied.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE UNITED STATES TRUST COMPANY OF NEW YORK, 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 Seventeen Thousand Four Hundred Fifty-Four Dollars and Sixty Cents (\$17,454.60) with interest thereon 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

APR 10 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

MAILED MAY 17 1968  
OFFICE OF THE CLERK OF THE COMMISSION

Clerk of the Commission

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).)