

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

IN THE MATTER OF THE CLAIM OF

GEORGE A. BUTLER, TRUSTEE UNDER  
THE WILL OF LORNA LUTTGEN, DECEASED

Claim No. CU -2189

Decision No. CU 2041

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

George A. Butler, Jr., Esq.

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 \$1,676.40 was presented by GEORGE A. BUTLER, TRUSTEE UNDER THE WILL OF LORNA LUTTGEN, DECEASED, and is based on an interest in bonds issued by the Cuba Railroad Company.

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, rights or interests 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.

Lorna Luttgen, the deceased, died on March 10, 1958. Under her will, a trust was created having as part of its corpus the bonds that are the subject of this claim. GEORGE A. BUTLER was appointed Trustee under the Will. Beneficiaries under the trust are Kathleen Wade and Jane Wiler (nee Wade) both of whom have been nationals of the United States since their respective births in the United States. The will provides for the payment of income in equal shares to said Jane Wade, now Wiler, and Kathleen Wade. Upon the death of either, the balance of income is to be paid to the survivor. Upon the death of the last survivor of these two, the balance is to be paid to the Presbyterian Children's Village in Pennsylvania of the United Presbyterian Church in the United States of America. This is a non-profit, non-stock, charitable corporation, organized under the laws of Pennsylvania. The Commission holds that the corporation qualifies as a claimant within the purview of Title V of the Act.

On the basis of evidence of record, the Commission finds that Lorna Littgen, deceased, had been the owner of two bonds in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company and known as "Improvement and Equipment Gold Bonds, 4%, due June 30, 1970" issued under an Indenture of July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, with Chemical Bank New York Trust Company as Successor Trustee. The bonds in question are Nos. M1347 and M1349.

The record discloses that the Cuba Railroad Company, organized in the State of New Jersey, was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was a wholly-owned subsidiary of Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation and therefore does not qualify as a corporate "National of the United States" defined under

Section 502(1)(B) of the Act, supra. Therefore, claimant is entitled to file this claim based upon the bonds in question which represent debts of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Edgar F. Corliss, Claim No. CU-0785.)

By Indenture dated July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, the Cuba Railroad Company issued Dollar bonds secured by mortgage upon the realty and equipment of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were reissued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance. The record discloses that the last payment of interest on the bonds was made on November 1, 1958.

The Commission finds that the total amount of the unpaid indebtedness on the subject bonds was \$1,369.36 including the principal amount of \$1,270.00 and the interest due on the bonds from November 1, 1959 to October 13, 1960, the date of loss in the amount of \$99.36.

As stated above the trust of which the bonds are part is encumbered with life estates in favor of Jane Wiler and Kathleen Wade. According to evidence of record they were 44 years old and 42 years old, respectively on October 13, 1960. The value of the life estates and of the balance due the Presbyterian Children's Village must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate of a person aged 44 years is valued at .58751 of the estate. Since one half of \$1,369.36 (or \$684.68) was so encumbered, the value of the interest of Jane Wiler was \$402.26. The balance of their \$684.68, or \$282.42, enured to the benefit of Kathleen Wade, 42 years of age at the date of loss. Her life estate in \$967.10 is valued at .60869 at the subject estate, or \$588.66. The balance of \$378.44 enured to the benefit of the aforesaid Presbyterian Children's Village.

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

CERTIFICATION OF LOSS

The Commission certifies that GEORGE A. BUTLER, TRUSTEE UNDER THE WILL OF LORNA LUTTGEN, DECEASED 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 Thousand Three Hundred Six Hundred Sixty-Nine Dollars and Thirty-Six Cents (\$1,369.36) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement, for the following uses;

Jane Wiler	\$402.26
Kathleen Wade	588.66
Presbyterian Children's Village	378.44

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

3 JUL 1968

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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Sidney Freidberg, Commissioner

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).)

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 or 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.