

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

IN THE MATTER OF THE CLAIM OF

RICHARD O. TOLCHIN

Claim No. CU-2294

Decision No. CU-1490

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Tolchin and Schiff

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 \$7,270.00 was presented by RICHARD O. TOLCHIN, and is based on the asserted loss of his interest in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since birth.

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 the evidence of record, the Commission finds that claimant, RICHARD O. TOLCHIN, is, and since prior to October 13, 1960, has been the owner of the following bonds of the Cuba Railroad Company (hereafter referred to as "the Company"):

1. Two bonds, each in the original face amount of \$1,000.00, issued by the Company and known as First Mortgage Gold Bonds, 4%, due June 30, 1970, issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bonds issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. TRM 4450 and TRM 4451. Pursuant to the Supplemental Indenture of July 1, 1952, each of these bonds are overstamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

2. One bond, in the original face amount of \$1,000.00, issued by the Company and known as an "Improvement and Equipment Gold Bond, 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 bond in question is No. M 1602. By Indenture dated July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, the Company issued Dollar bonds secured by mortgage upon the reality 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 bonds was \$635.00, with interest at 4% per annum to be paid on the principal balance;

3. Nine bonds, each in the principal face amount of \$1,000.00, issued by the Company and known as "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970" issued under an Indenture of March 10, 1922 and a

Supplemental Indenture dated July 1, 1952, with the First National City Bank of New York as Successor Trustee. The bonds in question are numbered TRM 943, TRM 944, TRM 945, TRM 946, TRM 947, TRM 948, TRM 949, TRM 950, and TRM 951. The Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property 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 Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) 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 shows that the properties of Cuba Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represented debts which were a charge on property which has been nationalized by the Government of Cuba as defined in Section 502(3) of the Act (supra).

The Commission therefore finds that, as a result of the nationalization of the properties of the Cuba Railroad Company, claimant suffered a loss in connection with his bonds within the meaning of Title V of the Act. (See the Claim of Joseph Gans, FCSC Claim No. CU-1720; Claim of Edgar F. Corliss, FCSC Claim No. CU-0785; and Claim of Albert and Elizabeth Harris, FCSC Claim No. CU-2398.)

With regard to the value of these bonds on the date of loss, information available to the Commission discloses the following: that no part of the outstanding principal balance was ever paid on the First Mortgage Gold Bond, 4%, due June 30, 1970; and that the last payment of interest was made on January 1, 1959; that the last payment of interest on the "Improvement and Equipment Gold Bond, 4%, due June 30, 1970" was made on November 1, 1958; and that the last payment of interest on the "First Lien and Refunding Bond, Series A, 4%, due June 30, 1970" was made on December 1, 1958.

The Commission thus finds that:

1. The total amount of unpaid indebtedness on claimant's First Mortgage Gold Bonds, 4%, due June 30, 1970, on October 13, 1960, the date of loss, was \$985.72 including the principal amount of \$920.00, and interest due on the bonds in the total amount of \$65.72;
2. The total amount of the unpaid indebtedness on claimant's "Improvement and Equipment Gold Bond, 4%, due June 30, 1970" was \$684.68 including the principal amount of \$635.00 and the interest due on the bond from November 1, 1958 to October 13, 1960, the date of loss, in the amount of \$49.68;
3. The total amount of unpaid indebtedness on the "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970" was \$6,143.04 including the principal amount of \$5,715.00 on these bonds, and the total interest due on these bonds from December 1, 1959 through October 13, 1960, the date of loss, in the amount of \$428.04.

The Commission concludes that the total amount of the unpaid indebtedness on all of claimant's bonds was \$7,813.44 including the total principal amount of \$7,270.00 and the interest due on these bonds as of October 13, 1960, the date of loss, in the total amount of \$543.44.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by the 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.

It will be noted that the total amount of losses 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.

CERTIFICATION OF LOSS

The Commission certifies that RICHARD O. TOLCHIN 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 total amount of Seven Thousand Eight Hundred Thirteen Dollars and Forty-Four Cents (\$7,813.44) 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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

is a true and correct copy of the decision entered as the final decision of the Commission which was entered on MAY 17 1968

Francis Thacker

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).)

NOTICE TO TREASURY DEPARTMENT: The above listed bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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