

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

IN THE MATTER OF THE CLAIM OF

INTERCONTINENTAL HOTELS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2521

Decision No. CU -4545

Counsel for claimant:

Weisman, Allan, Spett and
Sheinberg
By Sydney B. Wertheimer, Esq.

AMENDED FINAL DECISION

Under date of April 13, 1970, the Commission entered its Final Decision on this claim without objections from claimant, certifying a loss in favor of claimant in the amount of \$2,614,705.21 plus interest. That certification represented the loss of a 47.167% stock interest in a Cuban corporation, Intercontinental Hotels Corporation of Cuba, S.A. (IHC of Cuba) in the amount of \$2,579,466.21 and a debt due from IHC of Cuba in the amount of \$35,239.00.

In the Claim of American Securities Corporation, Claim No. CU-3335, objections were filed with respect to the Commission's valuation of that claimant's 1/3 stock interest in IHC of Cuba. Upon consideration of those objections in the light of the entire record, the Commission found that the total value of all of the outstanding capital stock of IHC of Cuba on June 10, 1960, the date of loss, was \$9,758,219.30, and the value of that claimant's stock interest was increased accordingly.

The Commission, therefore, has reopened this claim on its own motion, and now finds that the value of this claimant's 47.167% stock interest in IHC of Cuba on June 10, 1960 was \$4,602,659.30.


Accordingly, the Certification of Loss in the Final Decision of April 13, 1970 is set aside and the following Certification of Loss will be entered, and the Final Decision is affirmed in all other respects.

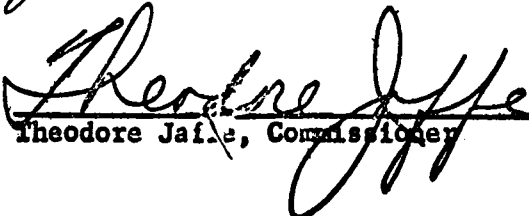
CERTIFICATION OF LOSS

The Commission certifies that INTERCONTINENTAL HOTELS CORPORATION 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 Four Million Six Hundred Thirty-Seven Thousand Eight Hundred Ninety-Eight Dollars and Thirty Cents (\$4,637,898.30) with interest thereon at 6% per annum from June 10, 1960 to the date of settlement.

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

APR 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 \$8,934,370.50, was presented by INTERCONTINENTAL HOTELS CORPORATION, based upon the loss of a stock interest in a Cuban corporation and a debt due from that corporation. The Cuban entity, Intercontinental Hotels Corporation of Cuba, S.A., is hereafter referred to as IHC 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 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.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times all of claimant's outstanding capital stock was owned by Pan American World Airways, Inc., a corporation organized under the laws of New York. An authorized officer of claimant and parent has certified that at all pertinent times more than 50% of the parent's outstanding capital stock was owned by nationals of the United States; and that as of April 15, 1960, 57,376 shares out of the parent's outstanding capital stock of more than 6,000,000 were owned by nonnationals 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.

STOCK INTEREST

The record establishes and the Commission finds that claimant owned 47,167 shares of common stock out of 100,000 shares, and 8,018.33 shares of preferred stock out of 17,000 shares, constituting a 47.167% stock interest in IHC of Cuba. The record further shows that by Resolution No. 4231, issued on June 10, 1960, IHC of Cuba was declared intervened by the Cuban Minister of Labor pursuant to Law 647 of November 24, 1959. The Commission finds that IHC of Cuba was intervened by the Government of Cuba on June 10, 1960.

Since IHC of Cuba was organized under the laws of Cuba, it does not qualify as a "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The sole business of IHC of Cuba was the operation of the Hotel Nacional. IHC of Cuba commenced operations in Cuba on August 1, 1955 when it acquired by purchase from National Cuba Hotel Corporation an assignment of a lease of the National Hotel of Cuba, Havana, which had over 500 rooms. On the same date, IHC of Cuba also acquired by purchase title to all of the personal property constituting the contents of the hotel, including the furniture, fixtures, equipment, linens, drapes, cutlery, china, silverware, generator, air-conditioning appliances, food, supplies, etc. Pursuant to the express terms of the lease, IHC of Cuba acquired the right to operate the entire hotel and all its facilities, rent free, for the period ending November 21, 1989. Thus, on the date of loss, June 10, 1960, the lease had almost 29-1/2 years to run. A copy of the original lease, dated August 16, 1929, and copies of the assignments thereof as well as of sales

documents of the various items of personal property situated on the premises of the hotel are included in the record.

Extracts from the books and records of IHC of Cuba disclose that it paid \$3,600,000.00 for the hotel lease and the contents of the hotel, the Cuban peso being on a par with the United States dollar. In addition IHC, of Cuba made substantial improvements to the premises, nearly all of which were completed between 1958 and 1960 as follows:

Building improvements	\$ 294,217.00
Furniture and fixtures	585,022.00
Air-Conditioning	485,975.00
Decoration	28,930.00
Miscellaneous improvements	<u>60,683.00</u>
Total	<u>\$1,454,827.00</u>

Accordingly, the total investment made by IHC of Cuba was \$5,054,827.00. IHC of Cuba enhanced its business operations by subleasing a part of the hotel premises for gambling and entertainment. Not only did the sublessee physically improve the sublet premises, but the casino and night club brought increased trade to IHC of Cuba and augmented the earnings of IHC of Cuba by its annual rent of \$300,000.00.

The evidence establishes that the operations of IHC of Cuba were very profitable. Copies of profit and loss statements, included in the record, show that during the first two full years, 1956 and 1957, IHC of Cuba earned net incomes of \$780,209.64 and \$880,468.82, respectively. The net worth of IHC of Cuba as shown by balance sheets, rose from \$2,601,017.26 in 1956 to \$3,157,636.08 on 1957.

In 1958 Castro's revolutionary activities spread to Northern Cuba including the City of Havana. As a result, the business of IHC of Cuba declined sharply. IHC of Cuba showed net losses of \$456,488.26 in 1958, \$825,367.78 in 1959, and \$390,527.00 for the four-months period of January through April 1960.

In view of the foregoing, claimant urges that the value of its stock interest in IHC of Cuba be determined as follows: Compute the going concern value of IHC of Cuba by multiplying its average annual earnings by 8 using the two normal years, 1956 and 1957.

Claimant's computation results in a going concern value of \$6,850,000.00, which equals \$3,230,939.50 for claimant's 47.167% stock interest.

Upon consideration of the entire record, the Commission concludes that the circumstances herein render it inequitable to determine the value of IHC of Cuba on the basis of its book value, shown in its balance sheets. The Commission finds that the valuation most appropriate to the property and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings of IHC of Cuba at 10%. (See Claim of Julius J. Shepard, Claim No. CU-0407, Amended Proposed Decision.)

As noted above, Castro's revolutionary activities in 1958 caused a sharp decline in the business operations of IHC of Cuba. After Castro assumed power on January 1, 1959, his regime commenced an extensive program of nationalization, expropriation, confiscation and intervention of property in Cuba. As a result of Castro's actions, IHC of Cuba experienced substantial losses in 1959 and thereafter. What had been a very profitable operation prior to Castro's activities became a business in which losses mounted progressively.

In view of these circumstances, it would be inequitable to compute the average annual net earnings of IHC of Cuba by including the entire period of its operations. On the other hand the elimination of all periods of time subsequent to 1957 merely because they were unprofitable would hardly constitute a sound basis for determining the value of IHC of Cuba under Title V of the Act.

The Commission finds that the fair and reasonable value of IHC of Cuba as a going concern should be based upon the capitalization of its average annual net earnings for the three-year period, 1956 through 1958. The record shows that IHC of Cuba earned net profits of \$780,209.64 and \$880,468.82 in 1956 and 1957, respectively, and suffered a loss of \$456,488.26 in 1958. Therefore, its total earnings for that period were \$1,204,190.20, and its average annual net earnings were \$401,396.73.

Accordingly, the Commission finds that the value of IHC of Cuba as a going concern on June 10, 1960, the date of loss, was \$4,013,967.30.

The facts in this case present a further element that warrants consideration. As indicated above, the record shows that IHC of Cuba had expended \$1,454,827.00 in improving the hotel premises, practically all of which had occurred shortly before intervention. Under the circumstances in this case, IHC of Cuba was unable to recoup any benefit from that recent investment. The Commission therefore finds it appropriate in this instance and equitable to the claimant to include that investment in determining the overall value of IHC of Cuba on the date of loss. Accordingly, the Commission finds that the overall value of IHC of Cuba on June 10, 1960, the date of loss, was \$5,468,794.30. Therefore, claimant's 47.167% stock interest in IHC of Cuba had a value of \$2,579,466.21.

MANAGEMENT COMPENSATION

Claimant asserts a further loss of \$3,138,192.00, representing the amount attributable to deprivation of its "management compensation." It is stated that claimant had entered into an agreement with IHC of Cuba, pursuant to which claimant was to receive an annual fixed fee of \$25,000.00 plus 25% of the net operating income of the hotel, after certain deductions, in consideration of management and operating services to be performed by claimant. This agreement was terminated on January 15, 1960 due to losses sustained by IHC of Cuba in 1958 and 1959. Claimant has computed its average annual income for such services, using 1956 and 1957, and has capitalized that amount at 12.5% to arrive at an asserted loss of \$3,138,192.00.

The Commission finds no valid basis for allowing this portion of the claim under Title V of the Act. Clearly this portion of the claim is based upon projected future earnings of the hotel, and the record shows that there were no such earnings after 1957. Moreover, the asserted contract was terminated prior to the intervention of IHC of Cuba. The Commission finds that

any loss which claimant may have sustained in this respect is not one of the types covered by Title V of the Act. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915; Claim of Ford Motor Company, Claim No. CU-3072.) Accordingly, this portion of the claim is denied.

DEBT

The balance sheet for IHC of Cuba as of April 30, 1960 shows that it owed claimant a debt of \$39,410.01. Extracts from claimant's records, however, disclose that as a result of subsequent adjustments, the amount due claimant from IHC of Cuba was \$35,239.00. The Commission, therefore, finds that claimant also sustained a loss of a debt due from an intervened Cuban entity in the amount of \$35,239.00. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

CONTINGENT CLAIM

Claimant has also asserted a contingent or "protective" claim in the amount of \$2,000,000.00 plus accrued interest. The record shows that IHC of Cuba borrowed \$2,000,000.00 on December 20, 1957 from Banco de Fomento Agricola a Industrial de Cuba, an instrumentality of the Government of Cuba. The loan was secured by a mortgage on the hotel premises, and was evidenced by 200 mortgage bonds, each in the amount of \$10,000.00, payable annually over a period of 15 years. It further appears that claimant made an agreement with the mortgagee bank on December 20, 1957, pursuant to which claimant agreed to purchase the mortgage bonds in the event of a default under the mortgage indenture. Subsequently, IHC of Cuba entered into agreements by which the time for paying the initial two installments was extended to December 20, 1973 and December 20, 1974, respectively.

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It is undisputed that claimant has, as yet, sustained no loss in this respect. Clearly, its contingent claim is intended to guard against any loss in the future should a claim be made against claimant and prove to be successful. The Commission notes that Title V of the Act provides for certain claims against Cuba which "have arisen since January 1, 1959". The statute does not provide for the determination of contingent losses or losses which were not sustained by claimant. (See Claim of Ford Motor Company, Claim No. CU-3072.) Moreover, it would appear that any claim by the mortgagee bank or Cuba pursuant to the contract with claimant would not be successful in view of the fact that any default under the mortgage indenture would necessarily be attributable to action by Cuba, and additionally because the security for the loan was taken by Cuba. For the foregoing reasons, the contingent or "protective" claim is denied.

Accordingly, claimant sustained the following losses within the meaning of Title V of the Act:

<u>ITEM OF PROPERTY</u>	<u>DATE OF LOSS</u>	<u>AMOUNT</u>
Stock interest in IHC of Cuba	June 10, 1960	\$2,579,466.21
Debt due from IHC of Cuba	June 10, 1960	<u>35,239.00</u>
	Total	<u>\$2,614,705.21</u>

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.

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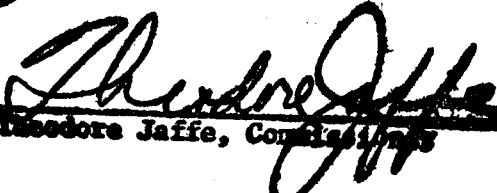
CERTIFICATION OF LOSS

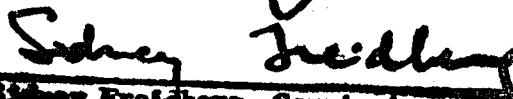
The Commission certifies that INTERCONTINENTAL HOTELS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Six Hundred Fourteen Thousand Seven Hundred Five Dollars and Twenty-One Cents (\$2,614,705.21) with interest thereon at 6% per annum from June 10, 1960 to the date of settlement.

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

MAR 4 1970


Lyell S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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).)