

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

IN THE MATTER OF THE CLAIM OF

HILTON INTERNATIONAL CO.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2965

Decision No. CU  
3837

Counsel for claimant:

Sidney H. Willner, 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 \$19,791,954.37 was presented by HILTON INTERNATIONAL CO., based upon the asserted loss of its Cuban subsidiary and a debt due from the Cuban subsidiary.

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, whose former name until November 5, 1964 was Hilton Hotels International, Inc., was organized under the laws of Delaware, and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. It further appears from the record that at all times between April 13, 1948 and May 9, 1967, all of claimant's outstanding capital stock was owned by Hilton Hotels Corporation also a Delaware corporation, and that at all pertinent times more than 95% of the outstanding capital stock of Hilton Hotels Corporation was owned by nationals of the United States. As of May 9, 1967, Trans World Airlines, Inc., a Delaware corporation, acquired all of claimant's outstanding capital stock. An authorized officer of Trans World Airlines, Inc. has certified that at all times between May 9, 1967 and October 13, 1967, more than 95% of the outstanding capital stock of Trans World Airlines, Inc., was owned by nationals 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.

The record establishes and the Commission finds that claimant owned a 100% stock interest in Hilton Hotels of Cuba, Inc. (Hoteles Hilton de Cuba, S.A.), a Cuban corporation, hereafter called the Cuban subsidiary. It further appears from the evidence of record that the Cuban subsidiary was intervened by the Cuban Minister of Labor on June 10, 1960 by Resolution

4231, pursuant to Law 647 of November 24, 1959. Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" as defined by Section 502(1)(B) of the Act, supra. 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 intervened 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.)

#### Stock Interest

Claimant has asserted that its 100% stock interest in the intervened Cuban subsidiary had a value of \$17,000,000.00. In support of this assertion, claimant submitted a copy of a lease executed on November 24, 1953 in Havana, Cuba, between claimant and a Cuban corporation, which lease claimant assigned to the Cuban subsidiary on November 6, 1957.

An examination of the lease indicates the following:

1. The lessor, owner of certain land in Vedado, Havana, agreed to construct on the land a "first-class" hotel, complete with all furnishings, fixtures, decorations, swimming pool, and all other personal property and related equipment, for the use of the premises as a hotel.

2. The lease was to expire 20 years after commencement of operations, which would be either the date of actual occupancy by the lessee, or the date the fully equipped premises were made available to the lessee, whichever occurred first.

3. Annual rent was to be 66-2/3% of the hotel's gross operating profit.

4. If two-thirds of the hotel's gross annual operating profit were ever less than \$250,000.00 (the peso being on a par with the United States dollar), the tenant's one-third share was to be reduced to make up the difference; and if the full income were less than \$250,000.00, all of the income was to belong to the lessor.

5. Notwithstanding the foregoing, if the rent as determined above were ever less than 7-1/2% of the gross receipts from all sources, then a sum equal to 7-1/2% of the gross receipts was to be the rent paid by the lessee.

In a letter to the Commission, dated October 13, 1967, claimant stated that the evaluation of loss was computed on the basis of "the performance and earnings of comparable Hilton Hotels". Claimant also stated in that letter that all records kept in the Cuban hotel had been confiscated by the Cuban Government and were not, therefore, available. It is noted however, that no showing has been made as to the availability vel non of duplicate records or other evidence supporting this part of the claim, in claimant's United States offices.

In view of the foregoing, the Commission directed claimant's attention to the fact that it appeared from the lease that all of the real and personal property in the hotel belonged to the lessor, and suggested in a letter, dated March 20, 1969, an explanation as to the method claimant had employed in computing its claim. Pointing to the fact that all records were left in Cuba, the Commission suggested the submission of affidavits from the persons who had thus computed the claim and other supporting evidence to establish what other hotels were deemed comparable and why, and what records were available to permit such a comparison under the circumstances. When no response was received, a "follow-up" letter, dated April 23, 1969, was sent to counsel for claimant, who is also an officer of the claimant corporation, and a final opportunity to support the claim was forwarded to claimant under date of July 1, 1969.

Under date of August 11, 1969, claimant responded to the Commission's inquiries by submitting an estimate of the value of the Cuban subsidiary's lease by comparison with the Caribe Hilton in Puerto Rico. In this submission claimant stated that the Cuban subsidiary's hotel in Havana had 540 guest rooms while the Caribe Hilton had 407 guest rooms, and that the two hotels were comparable as to facilities offered and rate structure.

An examination of the estimate, showing yearly comparisons between the two hotels for the years 1959 through 1968, indicates that the stated

pre-tax profits for the Caribe Hotel were "actual" while those of the hotel in Havana were "estimated". Claimant stated therein that the "estimated Pre-tax profit which the Havana Hilton would have earned, under normal conditions, during those years is equivalent to 132.68% of the Pre-tax profit earned by the Caribe Hilton".

In view of the foregoing provisions of the lease covering the hotel in Havana, the absence of evidence establishing the date the hotel was completed or commenced operating, and the statements of claimant in the latest submission, referring to profits the hotel "would have earned" from 1959 through 1968, it appears that the hotel never commenced operations, or if it did, it lasted for only a very short period of time. There is nothing in the record to establish that the hotel in Havana ever earned any profit, or that claimant expended any sum of money as an investment in the leasehold, for which an allowance is not being made, as indicated below.

The Commission has held that it might find it reasonable to determine the going concern value of an enterprise as a multiple of net earnings, after Cuban taxes, if such net earnings were demonstrated over a period of years, and if other factors did not militate against such a method. (See Claim of General Dynamics Corporation, Claim No. CU-2476.) In the instant case, since no earnings whatsoever have been demonstrated, the Commission holds that the application of such a method of evaluation would be inappropriate.

The record also includes a document, marked Exhibit III by claimant, which indicates that as of December 31, 1959, claimant's investment in the Cuban subsidiary was \$1,891,547.44, which amount claimant states it was allowed as a deduction in its 1960 Federal income tax return.

In a similar case based upon stock interests in certain Cuban corporations, the Commission held that information relating to investments allowed by the Internal Revenue Service in Federal income tax returns is insufficient since Title V of the Act requires a finding of value as of the date of loss. Since no such evidence was available in that case, the portions of the claim for stock interests were denied. (See Claim of Lucia W. Mendoza, Claim No. CU-3219, Final Decision entered on July 25, 1969.)

In the absence of specific evidence of value of claimant's 100% stock interest in the Cuban subsidiary on June 10, 1960, the date of loss, the Commission is constrained to hold that claimant has not established the extent of its loss. Accordingly, the portion of the claim based upon its 100% stock interest in the Cuban subsidiary is denied.

#### Debt Due From Cuban Subsidiary

It is asserted by claimant that the Cuban subsidiary owed claimant a debt in the amount of \$2,791,954.37, representing advances by claimant to the Cuban subsidiary "against stock and debentures".

The record includes a certified copy of a resolution adopted by claimant's Executive Committee on November 6, 1957, pursuant to which the lease in question was assigned to the Cuban subsidiary. One portion of the resolution provides that claimant "shall accept five-year, 5% debentures of Hilton Hotels of Cuba, Inc., in the principal amount of 75% of this corporation's [claimant] total investment in the Lease and Preliminary Agreement to the date of assignment and a sufficient number of shares of \$100 par value common stock of Hilton Hotels of Cuba, Inc., to be the equivalent of 25% of this corporation's total investment to the date of assignment; the said stock so issued to be fully paid and not liable to any further call, assessment or further payments".

Claimant has also submitted a document, marked Exhibit II, dated May 1960, which shows the figure, \$2,791,954.37, as "Total Cash Available But Not Transferred to HHI," but which instrument is generally so illegible as to be meaningless. An affidavit, dated October 10, 1967, from claimant's Executive Vice President, indicates that he is fully familiar with claimant's corporate records and states that between the date of incorporation of the Cuban subsidiary in 1956, and the date of loss, claimant had made advances to the subsidiary in the aggregate amount of \$2,791,954.37, "which amount is still owing and outstanding." However, Exhibit III which accompanies Exhibit II shows that claimant's total investment, advances and liabilities, owed by the subsidiary to the parent company, as of the date of taking, to be \$1,854,574.60.

On the basis of the foregoing evidence, the Commission finds that the Cuban subsidiary owed claimant debts in the aggregate amount of \$1,854,574.60

The Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 (July-Dec. 1966).) Moreover, the Commission has adhered to that conclusion despite the fact that the debtor Cuban corporation may be insolvent. (See Claim of Honeywell, Inc., Claim No. CU-2678; and Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887.) Accordingly, the Commission finds that the loss sustained by claimant on June 10, 1960 on account of debts due from the Cuban subsidiary was \$1,854,574.60.

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 HILTON INTERNATIONAL CO. 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 Million Eight Hundred Fifty-Four Thousand Five Hundred Seventy-Four Dollars and Sixty Cents (\$1,854,574.60) 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

SEP 3 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

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).)