

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

IN THE MATTER OF THE CLAIM OF

FOREMOST-McKESSON, INC., AS
SUCCESSOR IN INTEREST TO
FOREMOST DAIRIES, INC.

Claim No. CU-3254
CU-4870

Decision No. CU **1710**

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

Claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was originally presented by FOREMOST DAIRIES, INC. in Claim No. CU-3254. Claim No. CU-4870 was subsequently presented by FOREMOST-McKESSON, INC. AS SUCCESSOR IN INTEREST to the claim of FOREMOST DAIRIES. Both claims are based upon an asserted loss sustained in connection with the ownership of bonds issued by the Cuba Northern Railways 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, 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) 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."

The evidence establishes that McKesson & Robbins was incorporated in the State of Maryland in 1928. Foremost Dairies was formed in the State of Delaware in 1931. In 1949, Foremost Dairies was merged with Maxton Food Systems, Inc., and reincorporated in the State of New York under the name Foremost Dairies, Inc. On July 19, 1967, Foremost Dairies, Inc. merged with McKesson & Robbins, and reincorporated in the State of Maryland as FOREMOST-McKESSON, INC. An officer of FOREMOST-McKESSON, INC. has certified that 99.5% of the outstanding capital stock of the company is owned by nationals of the United States. The Commission holds that FOREMOST-McKESSON, INC. is a national of the United States within the meaning of Section 502(1)(B) of the Act. An officer of Foremost Dairies, Inc. has certified that at all times between 1945 and the merger of July 19, 1967, more than 50% of the outstanding capital stock of the company was owned by nationals of the United States. The Commission holds that Foremost Dairies, Inc. was a national of the United States as contemplated by Title V of the Act.

On the basis of evidence of record, the Commission finds that since prior to October 13, 1960 Foremost Dairies, Inc. had been the owner of ten bonds in the original face amount of \$1,000.00 each, issued by the Cuba Northern Railways Company and known as "First Mortgage Gold Bonds, 4%, due June 30, 1970" (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee. The Commission also finds that FOREMOST-McKESSON, INC. acquired all rights and interest of the Foremost Dairies, Inc. in the bonds pursuant to the merger of July 19, 1967. The bonds in question are Nos. TRM 3909 through TRM 3918, inclusive.

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."

Consolidated Railroads of Cuba also owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. The latter in turn owned the majority interest in Guantanamo and Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. Thus, none of these railroads qualify as a national of the United States under Section 502(1) of the Act.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company", 5-1/2% Gold Bonds were exchanged for First Mortgage Gold Bonds, 4%, due June 30, 1970. The interest on these bonds was payable on June 1 and December 1 of each year. The last payment of interest on these bonds was made on December 1, 1958.

The record shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represent the debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company, Foremost Dairies, Inc. suffered a loss in connection with its bonds, within

the meaning of Title V of the Act. (See Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

Evidence of record establishes that each of the subject bonds had an outstanding principal balance of \$635.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on the bonds on October 13, 1960, the date of loss, was \$6,825.60, including the principal amount of \$635.00 on each bond, and the interest due on each of the ten bonds in the amount of \$47.56 for the period December 1, 1958 to October 13, 1960.

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 Foremost Dairies, Inc. 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 provision is made for settlement thereof.

Inasmuch as the interest asserted by Foremost Dairies, Inc. in CU-3254 has been transferred by the terms of the merger of July 19, 1967, that claim is hereby denied.

CERTIFICATION OF LOSS

The Commission certifies that FOREMOST-McKESSON, INC., AS SUCCESSOR IN INTEREST TO FOREMOST DAIRIES, INC., succeeded to and 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 Six Thousand Eight Hundred Twenty-Five Dollars and Sixty Cents (\$6,825.60) 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 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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

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).)