

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

IN THE MATTER OF THE CLAIM OF

AMERICAN SECURITIES CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3335

Decision No. CU-4558

Counsel for claimant:

Stroock & Stroock & Lavan
By Stephen Bond, Esq.
By David Sher, Esq., of Counsel

Appeal and objections from a Proposed Decision dated and entered March 4, 1970.
Hearing on the record held on March 31, 1971

FINAL DECISION

On March 4, 1970 the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$1,822,931.43 plus interest based upon a 1/3 stock interest in a Cuban corporation, Intercontinental Hotels Corporation of Cuba, S.A. (IHC of Cuba), which was intervened by the Government of Cuba on June 10, 1960. A portion of the claim based upon a certain "management contract" was denied because it was outside the purview of Title V of the Act.

Counsel for claimant objected to the Proposed Decision only with respect to the Commission's determination as to the value of claimant's stock interest in IHC of Cuba. A brief was filed in support of the objections.

The amount determined as the loss of claimant herein was the result of the Commission's findings in the Claim of Intercontinental Hotels Corporation, Claim No. CU-2521, which involved a 47.167% stock interest in IHC of Cuba.

The value of IHC of Cuba had been determined by capitalizing at 10% its average annual net earnings for the years 1956 through 1958, and by adding thereto the value of certain improvements it had made shortly before intervention because IHC of Cuba was unable to recoup any benefit from that recent investment. On this basis, the Commission had found that the total value of IHC of Cuba on the date of loss was \$5,468,794.30.

Claimant contends through counsel that it was inequitable to include the results of IHC of Cuba's operations in 1958 in determining its average annual net earnings because the losses sustained in 1958 and thereafter directly resulted from Castro's revolutionary activities and therefore urges the use only of 1956 and 1957 earnings for this purpose.

Upon consideration of claimant's objections in the light of the entire record, the Commission now finds that the average annual net earnings of IHC of Cuba, employing only the years 1956 and 1957, were \$830,339.23. Capitalizing this amount at 10% results in a going concern value for IHC of Cuba of \$8,303,392.30. The Commission reaffirms its holding in the Proposed Decision that the value of the improvements made by IHC of Cuba shortly before intervention should be given consideration. Accordingly, the Commission finds 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. Therefore, claimant's 1/3 stock interest therein had a value of \$3,252,739.77.

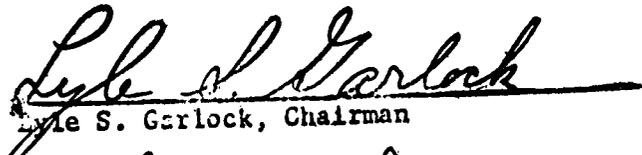
Accordingly, the Certification of Loss in the Proposed Decision of March 4, 1970 is set aside and the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

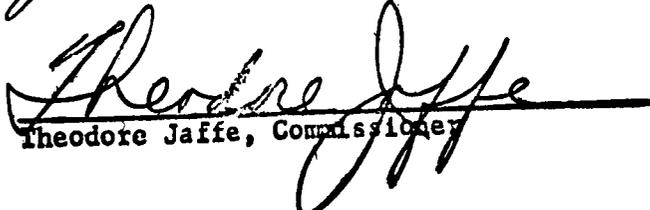
CERTIFICATION OF LOSS

The Commission certifies that AMERICAN SECURITIES CORPORATION sustained 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 Three Million Two Hundred Fifty-two Thousand Seven Hundred Thirty-nine Dollars and Seventy-seven Cents (\$3,252,739.77) 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 Final
Decision of the Commission

APR 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

AMERICAN SECURITIES CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3335

Decision No. CU -

4558

Counsel for claimant:

Radha Pillai, 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 \$6,046,064.00 was presented by AMERICAN SECURITIES CORPORATION based upon the asserted loss of a stock interest in a Cuban corporation.

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 New York and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that as of May 1, 1967, all of claimant's outstanding capital stock was owned by twelve persons, all of whom are shown as 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 evidence establishes and the Commission finds that claimant owned a one-third stock interest in Intercontinental Hotels Corporation of Cuba, S.A., a Cuban corporation. The Commission has found that the Cuban corporation was intervened by the Government of Cuba on June 10, 1960, and that the value of all of its outstanding capital stock on the date of loss was \$5,468,794.30. (See Claim of Intercontinental Hotels Corporation, Claim No. CU-2521.) It is therefore concluded that claimant sustained a loss in the amount of \$1,822,931.43.

Claimant contends that the value of its stock interest in the Cuban corporation should be increased by \$3,138,192.00 based upon a "management contract". It is asserted that another stockholder, Intercontinental Hotels Corporation (Claim No. CU-2521), had entered into a contract with the Cuban corporation to manage the hotel in Cuba for a stipulated fee. Claimant's contention in this respect is as follows:

It is reasonable to assume that another owner of the hotel would probably have been a hotel operating entity and would thus have been able to retain the benefits of

management which IHC Cuba [the Cuban corporation] turned over to IHC Delaware [claimant in CU-2521]. For the stockholders of IHC Cuba who were not stockholders of IHC Delaware, the value of the operating contract IHC Delaware had would have been value for which the IHC Cuba stockholders would have received compensation in the event of a sale of the controlling interest of the hotel. It is therefore our contention that the \$3,138,192 claimed by IHC Delaware as the value of the management contract be added to the value of the stock held by IHC Cuba stockholders.

Since this claimant was not a party to the management contract and therefore could have no interest in that contract, the Commission finds no valid basis for allowing this portion of the claim. Moreover, in Claim No. CU-2521 in which the real party in interest was involved, the Commission noted that the management contract had been terminated by the parties voluntarily on January 15, 1960, prior to the date of intervention of the Cuban corporation. In Claim No. CU-2521, the Commission denied the portion of that claim based upon the management contract. For all of the foregoing reasons, the portion of this claim based upon the management contract is also denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the Internatinnal 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.

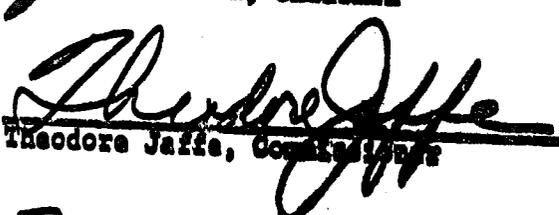
CERTIFICATION OF LOSS

The Commission certifies that AMERICAN SECURITIES CORPORATION sustained 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 Twenty-Two Thousand Nine Hundred Thirty-One Dollars and Forty-Three Cents (\$1,822,931.43) 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

4 MAR 1970


Lynn S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freiberg, 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).)