

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

IN THE MATTER OF THE CLAIM OF

JOHN S. SCHELLHARDT

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3366

Decision No. CU 2864

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 \$3,214.70 was presented by JOHN S. SCHELLHARDT, and is based on his interest in bonds issued by the Guantanamo and Western Railroad Company and the Cuba Northern Railways 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.

A portion of this claim is based upon an interest in four bonds, issued by the Guantanamo and Western Railroad Company, and known as a "First Mortgage Bond, 4%, Series A, due June 30, 1970", issued under an Indenture of January 1, 1928 and Supplemental Indentures of January 1, 1952 and October 1, 1959, with the Irving Trust Company of New York as Successor Trustee. Three of the subject bonds were issued in the original face amount of \$500.00 each, and the fourth bond was issued in the face amount of \$1,000.00. The bond certificates are numbered RD6, RD7, RD9, and RM45.

Claim is also presented for an interest in one bond in the original face amount of \$1,000.00, having an outstanding principal balance of \$635.00, issued by the Cuba Northern Railways Company, and of an issue 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 bond certificate is numbered M11567.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of one \$500.00 bond of the above-described Guantanamo and Western Railroad Company bond issue. The Commission also finds that claimant is the owner of the remaining above-described bonds which were purchased by him on the dates and for the amounts of consideration listed hereafter.

<u>Bond</u>	<u>Purchase Date</u>	<u>Price Paid</u>
Guantanamo and Western (\$1,000.00)	May 26, 1961	\$ 85.00
Guantanamo and Western (\$500.00)	July 29, 1961	\$ 40.00
Guantanamo and Western (\$500.00)	August 29, 1961	\$ 40.00
Cuba Northern	September 22, 1961	<u>\$ 32.50</u>
Total		\$197.50

The record discloses that Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba) owned all of the outstanding capital stock of the Cuba Northern Railways Company and 90.19% of the outstanding capital stock of the Guantanamo and Western Railroad Company. Each of these companies was listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Consolidated Railroads and the Cuba Northern Railways Company were organized under the laws of Cuba and thus, neither of these companies qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Moreover, although the Guantanamo and Western Railroad Company was organized in the State of Maine, it is substantially owned by Consolidated Railroads and does not qualify as a national of the United States under Section 502(1)(B) (supra). (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 July-Dec. 1966.)

In this type of situation it has been held previously that a claimant is entitled to file a claim based upon such bonds which represent debts of a nationalized enterprise or debts which were charges upon nationalized property within the purview of Section 502(3) of the Act. (See Claim

of Olive L. Fair, Claim No. CU-8104, and Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339).

The Guantanamo and Western Railroad Company, by Indenture dated January 1, 1928, issued bonds known as "First Mortgage Bonds, 6%, Series A, due January 1, 1958". Thereafter, by Supplemental Indenture dated January 1, 1952, these bonds were reissued as "First Mortgage Bonds, 4%, Series A, due July 30, 1970". As of 1952, no payment had been made against the face amount of the bonds. A second Supplemental Indenture, dated October 1, 1959, provided for the issuance of registered bonds, but made no change in the maturity date or interest rate to be paid thereon. The record discloses that the last payment of interest on the bonds was made on January 1, 1959, and the face amount of the bonds was never reduced by a payment against principal.

The Cuba Northern Railways Company, by Indenture dated July 1, 1927, issued bonds known as "First Mortgage Gold Bonds, 5 $\frac{1}{2}$ %, due June 1, 1942." Thereafter, by Supplemental Indenture dated July 1, 1952, these bonds were reissued with a reduced principal amount as "First Mortgage Gold Bonds, 4%, due June 30, 1970". As of 1952, the outstanding balance due on a \$1,000.00 bond of this issue was \$635.00. The record discloses that the last payment of interest on these bonds was made on December 1, 1958.

The Commission finds that the amount of the unpaid indebtedness on the one \$500.00 Guantanamo and Western bond owned by claimant prior to October 13, 1960, the date of loss, was \$535.68 including the principal amount of \$500.00 and the interest due on the bond from January 1, 1959 to October 13, 1960 in the amount of \$35.68. The Commission further finds that claimant suffered a loss with respect to this bond in the amount of \$535.68 as a result of the nationalization of the Guantanamo and Western Railroad Company on October 13, 1960.

With respect to the portions of this claim based on bonds purchased by the claimant subsequent to the date of loss, other provisions of the Act control.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960 and claimant did not acquire the subject securities until 1961. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant purchased them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered an additional loss in the

amount of \$197.50 (the price he paid) as a result of the nationalization of the Guantanamo and Western Railroad Company and the Cuba Northern Railway Company on 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).

The Commission concludes however that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the date of loss and the dates of purchase respectively, to the date on which provisions are made for settlement thereof, as follows:

On \$535.68 from October 13, 1960
On \$ 85.00 from May 25, 1961
On \$ 40.00 from July 27, 1961
On \$ 40.00 from August 29, 1961
On \$ 32.50 from September 22, 1961

\$733.18 Total.

CU-3366

CERTIFICATION OF LOSS

The Commission certifies that JOHN S. SCHELLHARDT 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 Seven Hundred Thirty Three Dollars and Eighteen Cents (\$733.18) with interest thereon at 6% per annum from the date of loss and the respective subsequent dates of purchase to the date of settlement.

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

AUG 21 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jarfe
Theodore Jarfe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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. 412-13 (1967).)