

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

IN THE MATTER OF THE CLAIM OF

NATIONAL OLD LINE
INSURANCE COMPANY

Claim No. CU -3542

Decision No. CU
1985

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$197,650.92, as amended, was presented by the NATIONAL OLD LINE INSURANCE COMPANY, based upon the asserted expropriation by the Government of Cuba of its business in 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 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 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 National Equity Life Insurance Company was incorporated in the State of Arkansas on July 27, 1923, but merged into the NATIONAL OLD LINE INSURANCE COMPANY (the surviving corporation) on March 31, 1960. Pursuant to the merger, claimant acquired all the assets of the National Equity Life Insurance Company including its assets in Cuba. The National Equity Life Insurance Company was engaged in writing life insurance in Cuba.

The claimant corporation, the NATIONAL OLD LINE INSURANCE COMPANY, was organized in the State of Arkansas on January 27, 1926 and one of its officers has certified that at all times between November 23, 1960 and presentation of this claim on May 29, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 5,924 (0.1%) of its 5,142,040 shares of capital stock are held by 41 persons who are other than United States nationals.

On December 30, 1960, the Government of Cuba published in its Official Gazette Resolution 619 (pursuant to Law 851), which listed as nationalized by the Government of Cuba, the National Equity Life Insurance Company. At the time of publication of Resolution 619, the National Equity Life Insurance Company had already been merged into the claimant corporation, the NATIONAL OLD LINE INSURANCE COMPANY. The Commission concludes that the resulting loss was sustained by the claimant.

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.

Claimant has stated its loss in the amount of \$197,650.42, itemized as follows:

Money deposited with the Trust Company of Cuba	\$150,000.00
Bank account with the Banco de Los Colonos	3,317.70
Bank account with the Trust Company of Cuba	19,333.22
4-1/2% Bonds of the External Debt of the Republic of Cuba on deposit with the Treasurer General of the Republic of Cuba	<u>25,000.00</u>
	\$197,650.92

Among the documents submitted (all in the name of the National Equity Life Insurance Company) to substantiate the claimed amounts are a Certificate of Deposit No. 0227 for \$150,000.00 issued September 1, 1960 by the Trust Company of Cuba; a copy of a bank statement of October 31, 1960 from the Banco de Los Colonos; a bank statement of

November 30, 1960 from the Trust Company of Cuba; a receipt of September 18, 1956 from Enrique Munoz Toscano, Tesorero General De La Republica P. S. R. acknowledging the deposit of \$25,000.00, consisting of 4-1/2% Bonds of the External Debt of the Republic of Cuba 1937-1977, 23 in the principal amount of \$1,000.00 and four in the principal amount of \$500.00; and a broker's receipt showing that those bonds were purchased on July 17, 1956.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (See Foreign Bondholder Protective Council, Inc., Annual Report 1958-1961, p. 52), but other than continued failure to make payments under its obligation, has taken no positive action concerning the rights of bondholders. The Commission has determined that the failure of the Government of Cuba to make the obligated payment on December 31, 1960, even without express repudiation of the bonds, occurring as it did for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gives rise to a valid claim for the amount of unpaid indebtedness as of that date. (See Claim of Clemens R. Maisa, Claim No. CU-3191.)

Claim is made only for the principal due on the bonds which the Commission finds to be in the amount of \$25,000.00. No claim is made for interest and no evidence has been submitted to establish that interest was due and owing.

The Commission concludes that claimant suffered a loss in the amount of \$197,650.92 within the meaning of Title V of the Act as a result of the nationalization of its assets in Cuba by the Government of Cuba on December 30, 1960.

The Commission has decided that in the 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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 30, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that the NATIONAL OLD LINE INSURANCE COMPANY 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 Hundred Ninety-Seven Thousand Six Hundred Fifty Dollars and Ninety-Two Cents (\$197,650.92), with interest thereon at 6% per annum from December 30, 1960 to the date of settlement.

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

JUN 19 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)