

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

IN THE MATTER OF THE CLAIM OF

BANKERS TRUST COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3656

Decision No. CU

1987

Counsel for claimant:

White & Case

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$1,081,531.17, was presented by BANKERS TRUST COMPANY based upon (1) its fiduciary capacity as Trustee with respect to certain bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, on behalf of the holders of all such outstanding bonds; and (2) debts assertedly due from an enterprise intervened by the Government of 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 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.

Claimant corporation was organized in the State of New York. An officer of the corporation has certified that from April 30, 1961 until all the stock of the BANKERS TRUST COMPANY was acquired by Bankers Trust New York Corporation, on May 31, 1966, more than 50% of its outstanding capital stock was owned by United States nationals. Moreover, an officer of Bankers Trust New York Corporation has certified that at all times since May 31, 1966 to date of the filing of this claim 50% of its outstanding capital stock was 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 99 per cent of its capital stock was registered in the names of persons residing within the United States.

Claimant has submitted a list of the owners of bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, Cuba, all of whom, so far as their addresses permitted, have been contacted by the Commission with respect to filing claims based upon such bonds, inasmuch as the Trustee's timely filing protected their rights, provided such individual filing is made not

later than March 1, 1970, to permit orderly disposition thereof before the termination of the claims program on May 1, 1970; and certifications will be made thereon as appropriate.

It not appearing that claimant is authorized to further pursue claim on behalf of the bondholders concerned, this part of the claim is denied on the ground that as between the Trustee, claimant herein, and the individual bondholder, the latter are the proper parties claimant as to the asserted losses involved with respect to the bonds. (See Claim of Morgan Guaranty Trust Co. of New York, Claim No. CU-1594.)

The second part of the claim is asserted for \$400, representing the Trustee's annual administration fee of \$200 per annum payable February 9, 1959 through February 9, 1961, no extraordinary expenses, disbursements or legal fees having been incurred by the Trustee during said period; and moreover, for its entire expenses, including legal fees, from February 9, 1959 to January 22, 1968, assertedly totalling \$4,849.22, as of the date of filing of the claim. It further appears that unpaid legal fees total \$2,743.22, all of which services assertedly were rendered subsequent to June 3, 1965 in connection with enactment of Title V of the Act and preparation of this claim.

The record discloses that the properties of the Association of the Religious Community of the Company of Jesus of Bethlehem College were intervened by the Government of Cuba on May 3, 1961. This organization does not 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. Therefore, claimant is entitled to file claim based upon debts due from an intervened enterprise. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The Commission concludes that claimant suffered a loss in the amount of \$400 within the meaning of Title V of the Act as a result of the intervention of the property of the Association by the Government of Cuba on May 3, 1961.

The portion of the claim in the amount of \$4,849.22 is asserted for expenses, including unpaid legal fees of \$2,743.22, all covering a period of time from February 9, 1959 to January 22, 1968. Nevertheless, the "expenses" of \$2,106.00 are not shown to have occurred prior to the action of the Government of Cuba on May 3, 1961, and accordingly are denied.

Further, as to unpaid legal fees for services rendered in connection with enactment of Title V, and preparation of the claim, it does not appear that claimant has suffered a loss in this respect, and this item is also denied.

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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 3, 1961, the date on which the loss occurred, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that BANKERS TRUST 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 Four Hundred Dollars (\$400.00) with interest thereon at 6% per annum from May 3, 1961 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).)