

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

IN THE MATTER OF THE CLAIM OF

MARK GRINSTEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4890
CU-8160

Decision No. CU

1867

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MARK GRINSTEN, based on the asserted loss of his interest in bonds issued by the Cuba Railroad Company and the Cuba Northern Railways Company. Claimant has been a national of the United States since his naturalization on February 24, 1941.

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.

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 five bonds in the original face amount of \$1,000, issued by the Cuba Railroad Company and known as First Mortgage Gold Bond, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. 9693, 9698, 9701, 9702 and 9703.

The Commission also finds that claimant is, and since prior to October 13, 1960, has been the owner of five bonds in the original face amount of \$1,000 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 bonds in question are Nos. 16421, 16422, 16426, 16427 and 16428.

The record discloses that Cuba Northern Railways Company and Cuba Railroad Company were owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba). They were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Consolidated Railroads and Cuba Northern Railways were organized under the laws of Cuba and do not qualify as corporate "Nationals 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 Cuba Railroads was organized in New Jersey, it is wholly owned by Consolidated Railroads and does not qualify as a national of the United States under Section 502(1)(B) (supra).

Therefore, claimant is entitled to file these claims based upon the bonds in question which represent debts of nationalized enterprises within the purview of Section 502(3) of the Act. (See Claim of Kentucky Home Mutual Insurance Co., Claim No. CU-1339, and Claim of Joseph Gans, Claim No. CU-1720.)

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", bond holders surrendered Cuba Northern 5-1/2% Gold Bonds and received, in exchange, 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.

Evidence of record establishes that the subject Cuba Northern bonds each 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 claimant's Cuba Northern bonds on October 13, 1960, the date of loss, was \$3,412.80, including the principal amounts of \$635.00 on each bond, and the interest due on each of the five bonds in the amount of \$47.56 for the period December 1, 1958 to October 13, 1960.

Pursuant to Supplemental Indenture of July 1, 1952, the Cuba Railroad bonds are overstamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of \$32.86, or, 4% of the outstanding principal balance.

CU-4890
CU-8160

With regard to the value of the bonds on the date of loss, information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's Cuba Railroad bonds on October 13, 1960, the date of loss, was \$2,464.30 including the principal amount of \$2,300.00, and the interest due on the bonds in the amount of \$164.30.

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 claimant 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 provisions are made for settlement thereof.

CU-4890
CU-8160

CERTIFICATION OF LOSS

The Commission certifies that MARK GRINSTEN suffered a loss as a result of action 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 Five Thousand Eight Hundred Seventy-Seven Dollars and Ten Cents (\$5,877.10) 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

MAY 15 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 re-submitted.

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).)

CU-4890

CU-8160