

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

IN THE MATTER OF THE CLAIM OF

ADELAIDE LOEBER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4922

Decision No. CU -1629

AMENDED PROPOSED DECISION

On April 10, 1968, the Commission issued its Proposed Decision in this claim against the Government of Cuba, denying the claim for failure of proof. Claimant thereafter submitted additional evidence and information in support of this claim. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of the Commission be, and the same is amended to read as follows:

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of four bonds, each in the original face amount of 100 pesos issued by the Consolidated Railroads of Cuba and known as a 3% Cumulative Income Debenture, due October 1, 2001, issued under an Indenture of February 1, 1953, with the United States Trust Company of New York as Trustee. The bonds in question are Nos. C278 to C281, inclusive.

The record discloses that Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba) was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and 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 this claim based upon the bonds in question which represent a debt of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Edward R. Smith, Claim No. CU-5001.)

Information available to the Commission establishes that the last payment of interest on the subject debenture was made on April 1, 1959; however, the nationalized enterprise owed, as of that date, a total of 14.3% of the face amount of the debenture issued for prior accumulation of unpaid interest. Claimant, therefore, sustained the loss of the face amount of her bonds, the 14.3% prior accumulation of interest, and interest at 3% per annum from April 1, 1959 to October 13, 1960, the date upon which the enterprise was nationalized by the Government of Cuba.

As to the dollar value of the bond and interest, expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the date of loss.

The Commission further finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$475.64 including the principal amount of \$100.00 on each bond and the interest due, on each bond, to and including October 13, 1960, in the amount of \$18.91.

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 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.

CERTIFICATION OF LOSS

The Commission certifies that ADELAIDE LOEBER 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 Seventy-Five Dollars and Sixty Four Cents (\$475.64) 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 Amended
Proposed Decision of the
Commission

24 JUL 1968

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

Theodore Jaffe
Theodore Jaffe, 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 Amended 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).)

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Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ADELAIDE LOEBER and is based upon the asserted loss of a bondholder's interest in Consolidated Railroads of Cuba. Claimant stated that she has been a national of the United States since her birth in the United States.

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 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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

No evidence in support of this claim was submitted. By Commission letter of September 27, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of November 2, 1967 and November 16, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On January 8, 1968, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of

Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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