

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

IN THE MATTER OF THE CLAIM OF

JUDITH S. ABELSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-5013

Decision No. CU -1937

Counsel for claimant:

Edward B. Schoen, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated May 29, 1968, the Commission denied this claim based on claimant's failure to meet the burden of proof in that she failed to establish that the subject bonds and accrual certificates were owned by a national of the United States on the date of loss, and that the resulting claim was continuously so owned until the date of filing with the Commission.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, the Proposed Decision is hereby amended.

On the basis of evidence of record, the Commission now finds that one Ada Schoen, a national of the United States from birth, was, and since prior to October 13, 1960, had been the owner of four bonds in the original total face amount of 20,000 pesos, issued by the Consolidated Railroads of Cuba, of an issue known as "3% Cumulative Income Debentures, due October 1, 2001," and ten accrual certificates in the total face amount of 22,272 pesos, issued by the Consolidated Railroads of Cuba, pursuant to a corporate "recapitalization Plan", effective February 11, 1953.

The record further discloses that claimant, JUDITH S. ABELSON, purchased the subject bonds and accrual certificates on September 26, 1962 for a total consideration of \$250.06.

In our decisions entitled the Claim of Edward R. Smith, Claim No. CU-5001 and the Claim of Meyer Lobsenz, Claim No. CU-1005, which we incorporate herein

by reference, we held that the Consolidated Railroads of Cuba was nationalized by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining value.

The Commission finds that claimant, upon her purchase of the securities subsequent to the date of loss, succeeded to the loss sustained by the assignor of the claimed securities as a result of the nationalization of the Consolidated Railroads of Cuba on October 13, 1960, but concludes that claimant is limited, by Section 507(b) of the Act, to the amount of consideration paid, in the amount of \$250.06. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

Section 507(b) of the Act provides as follows:

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.

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 September 26, 1962, the date on which claimant acquired the claim, to the date on which provisions are made for the settlement thereof.

The certification of loss, as stated below, will be entered, and in all other respects the Proposed Decision is affirmed.

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CERTIFICATION OF LOSS

The Commission certifies that JUDITH S. ABELSON 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 Two Hundred Fifty Dollars and Six Cents (\$ 250.06) with interest at 6% per annum from September 26, 1962 to the date of settlement.

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

NOV 27 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

Counsel for claimant:

Edward B. Schoen, Esquire

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 JUDITH S. ABELSON in the amount of \$42,272.00 and is based upon the asserted ownership and loss of her interest in four bonds and ten accrual certificates issued by the Consolidated Railroads of Cuba. Claimant 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 right 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.

Section 502(1)(B) of the Act defines the term "National of the United States" to mean a natural person who is a citizen of the United States or 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 term does not include aliens.

Section 507(b) provides:

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.

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).)

Thus, in order for the Commission to favorably consider claims under Section 503(a) of the Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization

or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

On October 13, 1960, the Government of Cuba published Law 890 in its Official Gazette, which listed as nationalized the Consolidated Railroads of Cuba. Accordingly, the Commission has held that as a result of the nationalization of the properties of Consolidated Railroads of Cuba on October 13, 1960, holders of bonds and accrual certificates sustained a loss on that date, within the meaning of the Act. (See Claim of Edward R. Smith, Claim No. CU-5001 and Claim of Meyer Lobsenz, Claim No. CU-1005.)

The record discloses that on September 26, 1962, claimant purchased from Moore & Company (as principals), for a total of \$250.06, four bonds in the original total face amount of 20,000 pesos, issued by the Consolidated Railroads of Cuba, of an issue known as "3% Cumulative Income Debentures, due October 1, 2001," and ten accrual certificates in the total face amount of 22,272 pesos, issued by the Consolidated Railroads of Cuba, pursuant to a corporate "Recapitalization Plan", effective February 11, 1953.

Claimant has submitted four bonds of the issue hereinabove described, numbered RV 10063,4,5, and 6, as well as ten accrual certificates, numbered NYRU 1322, NYRU 958, NYR 2164, NYR 2061, NYBU 648, NYBU 693, NYB 647, NYBU 704, NYBU 703, and NYBU 702.

By Commission letter of February 21, 1968, claimant was advised, through counsel, to submit evidence to establish the identity and United States nationality of the owner or owners of the subject bonds and accrual certificates on October 13, 1960 and continuously thereafter to claimant's acquisition on September 26, 1962.

However, no evidence in response to this correspondence has been received to date.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish that the subject bonds and accrual certificates were owned by a national of the United States on the date of loss, and that the resulting claim was continuously so owned until the date of filing with the Commission.

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

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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. 31.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)