

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

IN THE MATTER OF THE CLAIM OF

HARTFORD FIRE INSURANCE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0021

Decision No. CU 3587

Counsel for claimant:

Hale Anderson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$146,387.60, was presented by HARTFORD FIRE INSURANCE COMPANY based upon the asserted loss of certain personal property 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 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 evidence establishes that claimant was organized under the laws of Connecticut. An authorized official of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. Another official has certified that as of February 28, 1967, .0235% of claimant's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that claimant carried on an insurance business in Cuba through a general agent, a Cuban entity. The evidence includes a copy of claimant's articles of incorporation; a copy of a certificate authorizing claimant to conduct an insurance business in Cuba; a copy of a power of attorney authorizing the said Cuban entity to act as claimant's general agent in Cuba; copies of some of the bonds and securities for which claim is made; a statement of claimant's assets and liabilities in Cuba as of October 26, 1960, audited by a Cuban accountant on March 31, 1961; a statement of claimant's assets and liabilities in Cuba as of October 24, 1960 and accompanying report prepared by an American accounting firm on August 8, 1961; as well as statements and affidavits from officials of claimant concerning this claim.

On the basis of all the evidence of record, the Commission finds that claimant owned certain assets in Cuba; namely, bank deposits with the Chase Manhattan Bank, Havana, Cuba Branch; debts due from claimant's general agent in Cuba; premiums and accounts receivable from Cuban nationals; 30 shares of

stock of Financiera Nacional de Cuba in the aggregate face amount of 3,000 pesos, equivalent to \$3,000.00; 114 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, in the aggregate face amount of \$114,000.00; and 13 bonds of the issue known as 4% Bonds of the Public Debt of Cuba, 1950-1980, in the aggregate face amount of 13,000 pesos, equivalent to \$13,000.00. It is noted that the Cuban peso was on a par with the United States dollar.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized HARTFORD FIRE INSURANCE COMPANY. The Commission finds that all of claimant's assets in Cuba, except as noted below, were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim on the basis of the report of August 8, 1961 from the accounting firm in the United States, which included a statement of its assets and liabilities in Cuba as of October 24, 1960, as follows:

ASSETS

Cash:

Deposits in the Chase Manhattan Bank, Havana (Nationalized)		
Time deposits	\$ 50,000.00	
Current account	<u>50,000.00</u>	\$100,000.00

Investments (At Book Value):

Guarantee deposits with the Cuban Treasury; Bonds of the Republic of Cuba:		
\$112,000 External Secured Sinking Fund, 4-1/2%, due 6/30/77	\$114,867.00	
\$ 10,000 Eight National Loan, 4%, due 6/30/80	<u>10,407.00</u>	
	<u>125,274.00</u>	

30 Shares Financiera Nacional de Cuba (Class B)	<u>3,000.00</u>	128,274.00
--	-----------------	------------

Agency receivables:

Outstanding premiums	\$ 85,889.16	
Agency balances due:		
Cash available	\$7,694.37	
Suspense	<u>2,559.16</u>	
	<u>10,253.53</u>	96,142.69

Other assets:

Reinsurance receivable (Compania Reaseguradora Cubana)		<u>1,813.92</u>
---	--	-----------------

Total assets		<u>\$326,230.61</u>
--------------	--	---------------------

LIABILITIES

Outstanding losses	\$172,507.00	
Less - estimated reinsurance	<u>96,975.00</u>	\$ 75,532.00
Unearned premiums		94,600.31
Commissions payable		<u>9,710.70</u>
Total liabilities		<u>\$179,843.01</u>
Excess of assets over liabilities		<u><u>\$146,387.60</u></u>

It was noted by the American accounting firm that the time deposits, listed under "Cash", should include the additional amount of \$499.24, representing interest collected on matured deposits, thereby increasing the bank deposits to \$100,499.24. These facts are corroborated by the report from the Cuban accountant. The Commission therefore finds that the aggregate amount of claimant's bank deposits on October 24, 1960 was \$100,499.24.

The Cuban accountant's statement of assets and liabilities shows that claimant owned 112 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, and these 112 bonds in the face amount of \$112,000.00 had been deposited with the Cuban Treasury Department. While the statement of assets and liabilities of the American accounting firm also shows 112 of such bonds, the accompanying report states that claimant has in its possession an additional \$2,000.00 in face amount of these bonds. Claimant's statements of April 26, 1968 corroborate the accountant's report. The Commission therefore finds that claimant owned 114 bonds of this issue with a face value of \$114,000.00.

Records available to the Commission disclose that Cuba first defaulted with respect to these 4-1/2% bonds on December 30, 1960. (See Claim of Clemens R. Maise, Claim No. CU-3191.) Accordingly, since the Government of Cuba last paid interest on these obligations as of June 30, 1960, on account of the semiannual coupon that had been attached previously to each of the bonds, the Commission finds that on October 24, 1960, the date of loss, Cuba was indebted to claimant with respect to these 4-1/2% bonds in the aggregate amount of \$115,624.50, representing \$114,000.00 in principal and, interest in the amount of \$1,624.50.

The Cuban accountant's statement of assets and liabilities discloses that claimant owned 10 bonds of the issue known as 4% Bonds of the Public Debt of Cuba, 1950-1980, in the face amount of 10,000.00 pesos, equivalent to \$10,000.00, and that these securities had been deposited with the Cuban Treasury Department. The statement of assets and liabilities prepared by the American accounting firm also indicates that claimant owned 10 bonds of this issue. The accompanying report, however, states that claimant has in its possession an additional \$3,000.00 of these bonds, which fact is substantiated by claimant's statements of April 6, 1968. The Commission therefore finds that claimant owned 13 bonds of this issue with a face value equivalent to \$13,000.00.

Copies of these bonds, submitted by claimant, indicate that they have attached interest coupons in the equivalent amount of \$20.00 each, payable semiannually on June 30 and December 31, with respect to each \$1,000.00 bond until maturity on June 30, 1980. The first attached interest coupon is the one falling due on June 30, 1961. The Commission therefore finds that the Government of Cuba owed claimant no interest with respect to these 4% bonds on October 24, 1960, the date of loss. Accordingly, the Commission finds that on the date of loss Cuba was indebted to claimant with respect to these 4% bonds in the amount of \$13,000.00.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba; that Cuba had guaranteed the investments of stockholders of this entity. The Commission found that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated, that all its liabilities had been assumed by the Government of Cuba; and that a claim for such loss arose on August 17, 1960 under Title V of the Act. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.) The Commission finds that the amount of the unpaid debt of Cuba owing to claimant on August 17, 1960 was \$3,000.00 with respect to the 30 shares of Financiera Nacional de Cuba stock. These securities were also indicated by the Cuban accountant as having been deposited with the Cuban Treasury Department.

The Cuban accountant's report of March 30, 1961 shows a net amount of 77,773.26 pesos due from the general agent for premiums payable less commissions due the agent. Pursuant to the agent's power of attorney, it could pay all debts of claimant relating to claimant's insurance business, which included debts such as those due the agent for commissions on policies written.

The American accounting firm's report of August 8, 1961 states that it has verified all items included in its report. It appears from that report that the amount due from the general agent was \$96,142.69, and that collections were received by the Home Office in the amount of \$20.58 and commissions were due the agent in the amount of \$9,710.70. The Commission therefore finds that on the date of loss, October 24, 1960, the general agent owed claimant the net amount of \$86,411.41.

Based upon the statements of both accountants, the Commission finds that on October 24, 1960, claimant owned an account receivable due from a Cuban national in the amount of \$1,813.92, pursuant to then existing reinsurance agreements.

Claimant has reduced the amount of its claim by unearned premiums in the amount of \$94,600.31, and outstanding losses less estimated reinsurance in the net amount of \$75,532.00.

It is noted that claimant did not own a legal entity in Cuba, but merely carried on an insurance business through a general agent. Thus we are not dealing here with the nationalization of a Cuban corporation, in which case all liabilities would have to be considered. In such cases, the Commission consistently has not reduced the value of a corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for taxes owing to the Republic of Cuba which the Commission concluded was appropriate on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.) Accordingly, the same rule will apply in this case where the business was conducted through a general agent. The amounts due claimant's agent are to be distinguished in these respects because the agent had authority to deduct its commissions in rendering accounts to claimant and carrying on claimant's business pursuant to a general power of attorney.

Moreover, the Commission notes that the nature of "unearned premiums" of an insurance company has been the subject of litigation in the courts of the United States. In an early decision, the court held in a case that was never appealed or overruled that "As soon as a premium is paid and the indemnity is in force, the premium becomes the absolute property of the insurer", and that payment of the unearned premium to the insured "is not a return, in specie, of any part of the premium paid and the contract of cancellation does not establish any trust or similar relation regarding the premium. It is merely a contract obligation." (Aetna Ins. Co. v. Hyde, 34 F. 2d (W.D. Mo. 1929).) In a more recent case, the court held that "The premiums when paid become the property of the insurer and the insured has no interest in them." (United States v. Behrens, 230 F. 2d 504 (2d Cir. 1956); cert. denied, 351 U.S. 919 (1956).)

For all of the foregoing reasons, the Commission finds no valid ground for reducing the amount of loss sustained by claimant on the basis of unearned premiums or outstanding losses.

Based upon all the evidence of record, the Commission finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$320,349.07, as shown in the following recapitulation:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Cash deposits	October 24, 1960	\$100,499.24
4-1/2% Cuban Government bonds	October 24, 1960	115,624.50
4% Cuban Government bonds	October 24, 1960	13,000.00
30 shares Financiera Nacional de Cuba	August 17, 1960	3,000.00
Debt from general agent	October 24, 1960	86,411.41
Debt from Cuban national	October 24, 1960	<u>1,813.92</u>
Total Loss		\$320,349.07

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HARTFORD FIRE 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 Three Hundred Twenty Thousand Three Hundred Forty-nine Dollars and Seven Cents (\$320,349.07) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

APR 2 1969

*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 for 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 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).)