

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

IN THE MATTER OF THE CLAIM OF

JOSEPH MARKEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0096

Decision No. CU **3487**

PROPOSED DECISION

Claimant, JOSEPH MARKEL, who owned securities issued by the Consolidated Railroads of Cuba and the Cuba Railroad, asserts a claim for the amended amount of \$631,760.00 under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Railroads.

In our decisions entitled the Claim of Cora W. Welsh (Claim No. CU-2503) and Claim of Irwin Nack, et al. (Claim No. CU-1960), which claims are incorporated herein by reference, we held that the properties of these Railroads were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that these types of claims are 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 the value per preferred share of Consolidated Railroads of Cuba as \$272.00 and the value per preferred share of Cuba Railroad as \$100.00.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Welsh and Nack decisions; that he was an American national at the requisite times; that he has been the owner of 1,080 preferred shares of Consolidated Railroads and 970 preferred shares of the Cuba Railroad since prior to October 13, 1960; and that he suffered a loss thereon in the amount of \$390,760.00 within the meaning of Title V of the Act.

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 507 of the Act provides, as to assignment of claims, that

(b) 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.

On the basis of evidence of record, the Commission also finds that claimant acquired another 20 preferred shares of Consolidated Railroads of Cuba stock by purchase on June 25, 1963 for \$82.15, and another 60 preferred shares of Cuba Railroad stock by purchase of 30 shares on June 25, 1963 and 30 shares on July 15, 1963 for consideration of \$79.50 and \$71.55, respectively.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the types subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the

United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to \$233.20, the actual consideration paid for these shares.

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 October 13, 1960 on \$390,760.00, but from June 25, 1963 on \$161.65, and from July 15, 1963 on \$71.55, the dates on which claimant acquired this portion of the claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH MARKEL 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 Ninety Thousand Nine Hundred Ninety-three Dollars and Twenty Cents (\$390,993.20) with interest at 6% per annum from October 13, 1960 on \$390,760.00, from June 25, 1963 on \$161.65, and from July 15, 1963 on \$71.55, to the date of settlement.

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

JAN 23 1969

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feidberg
~~Sidney Feidberg~~, 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).)