

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

IN THE MATTER OF THE CLAIM OF

ROY E. WILSON
EDITH K. WILSON
DONALD ROY WILSON
BARBARA W. ROWLEE
DORIS W. PHILLIPS

Claim No. CU -0099

Decision No. CU **3252**

Under the International Claims Settlement
Act of 1949, as amended

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 ROY E. WILSON in the total amount of \$59,692.50 and is based in part on an asserted loss sustained in the connection with his ownership of an interest in bonds and an accrual certificate issued by the Consolidated Railroads of Cuba. Additional portions of this claim were presented by ROY E. WILSON on his own behalf and upon behalf of his wife EDITH K. WILSON, his son DONALD ROY WILSON, and his granddaughters BARBARA W. ROWLEE, and DORIS W. PHILLIPS, based on asserted losses sustained in the connection with their ownership of stock interests in Compania Cubana, S.A. Each of the claimants herein has been a national of the United States since birth.

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 the claimant, ROY E. WILSON is, and since prior to October 13, 1960, has been the owner of one bond in the original face amount of 5,000 pesos, and two bonds in the original face amount of 1,000 pesos each, issued by the Consolidated Railroads of Cuba, and of an issue known as 3% Cumulative Income Debentures, 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. RV 14180, RM 20059 and RM 20060.

The Commission further finds that the claimant, ROY E. WILSON is, and since prior to October 13, 1960, has been the owner of one Accrual Certificate, in the face amount of 3,480 pesos, issued by the Consolidated Railroads of Cuba, pursuant to a corporate Recapitalization Plan, effective February 11, 1953. The Accrual Certificate in question is No. NYRU 1661.

The corporate Recapitalization Plan of the Consolidated Railroads of Cuba, adopted by vote of the stockholders of that company on February 11, 1953, provided for the deposit of all shares of 6% Cumulative Preferred Stock in the company. In exchange for each share of preferred stock so deposited, the stockholder received the following:

(a) A 3% Cumulative Income Debenture, due in the year 2001, in the face amount of one hundred (100) pesos;

(b) An accrual certificate, without specific maturity date, non-interest bearing, in the face amount of 29 pesos; and

(c) Cash in the net amount of 5.91 pesos after deduction of Cuban taxes.

As of October 1, 1952, the company owed accrued and unpaid dividends on its 6% Cumulative Preferred stock, and the exchange described above was chosen as the method of recapitalization.

Under the terms of the corporate Recapitalization Plan and of the accrual certificate itself, a new order of priority of payment was created, as to the obligations and preferred stock of the company. First in priority were the debts and other obligations of the company, including bonds. Second were the outstanding shares of preferred stock. Third in order, and on par with each other, were the accrual certificates and the accrued and unpaid dividends on the outstanding preferred stock. The holders of common stock were last in order of priority.

Evidence of record and other information available to the Commission disclose that the value of the real property, equipment and other assets of the Consolidated Railroads of Cuba exceeded its total obligation on debts, bonds, preferred stock, accrual certificates, and accrued and unpaid preferred stock dividends.

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. In this type of situation, it has been held previously that a holder of such bonds and accrual certificates is entitled to file a claim based upon his interest therein which represents 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; and Claim of Meyer Lobsenz, Claim No. CU-1005).

Information available to the Commission establishes that the last payment of interest on the subject debentures was made on April 1, 1959; however, as of that date, the nationalized enterprise owed a total of 14.3% of the face amount of the debentures for prior accumulation of unpaid interest. Claimant, therefore, sustained the loss of the face amount of the bonds, the 14.3% prior accumulation of interest, the interest on the bonds from April 1, 1959 to October 13, 1960, the date of nationalization, and the face amount of his accrual certificate.

As to the dollar value of the bonds, the interest, and the accrual certificate, all 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 unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$8,323.56 including the principal amount of \$7,000.00; and interest due, to and including October 13, 1960 in the amount of \$1,323.56; additionally, the Commission finds that the value of the accrual certificate was \$3,480.00 on that date. Consequently, claimant's loss sustained in connection with the Consolidated Railroads securities was in the amount of \$11,803.56.

On the basis of evidence of record, the Commission finds that each of the claimants herein is, and since prior to August 6, 1960, has been the owner of shares of capital stock in Compania Cubana, S.A. The record shows that each of the claimants owns the number of shares represented by the certificate numbers included in the following data:

| <u>Claimant</u> | <u>Number of Shares</u> | <u>Certificate Nos.</u> |
|-------------------|-------------------------|-------------------------|
| Roy E. Wilson | 480 | US157 |
| Edith K. Wilson | 60 | US78 and US601 |
| Donald Roy Wilson | 31 | US102 and US156 |
| Barbara W. Rowlee | 27 | US80 and US347 |
| Doris W. Phillips | 27 | US79 and US334 |

The record discloses that Compania Cubana, S.A., was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 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 (supra).

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is most appropriate to the property and equitable to the claimant. The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific basis of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value of the interest owned by claimants in Compania Cubana, S.A., the Commission has considered claimants' assertions, a 1959 balance sheet for the company with supporting notes, as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

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The Commission has considered carefully all of the evidence of record, and finds that \$10,068,033.00 was the value of Compania Cubana, S.A. at the time of loss, at which time there were 129,004 outstanding shares of stock of the said company, and that the value of each share was \$78.0443. (See Claim of George E. Sanford, Claim No. CU-2923.)

Accordingly, in the instant claim, the Commission concludes that claimants, as holders of shares of capital stock of Compania Cubana, S.A. suffered losses within the meaning of Title V of the Act, as a result of the nationalization of Compania Cubana, S.A., by the Government of Cuba on August 6, 1960.

The numbers of shares held and the values on the date of loss are included in the following data:

| <u>Claimant</u> | <u>Number of Shares</u> | <u>Value</u> |
|-------------------|-------------------------|--------------|
| Roy E. Wilson | 480 | \$37,461.26 |
| Edith K. Wilson | 60 | 4,682.66 |
| Donald Roy Wilson | 31 | 2,419.37 |
| Barbara W. Rowlee | 27 | 2,107.20 |
| Doris W. Phillips | 27 | 2,107.20 |

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 it is so ordered.

CERTIFICATION OF LOSSES

The Commission certifies that ROY E. WILSON 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 Forty-Nine Thousand Two Hundred Sixty-Four Dollars and Eighty-Two Cents (\$49,264.82) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and,

the Commission certifies that EDITH K. WILSON 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 Thousand Six Hundred Eighty-Two Dollars and Sixty-Six Cents (\$4,682.66) with interest at 6% per annum from August 6, 1960 to the date of settlement; and

the Commission certifies that DONALD ROY WILSON 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 Thousand Four Hundred Nineteen Dollars and Thirty-Seven Cents (\$2,419.37) with interest at 6% per annum from August 6, 1960 to the date of settlement; and

the Commission certifies that BARBARA W. ROWLEE 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 Thousand One Hundred Seven Dollars and Twenty Cents (\$2,107.20) with interest at 6% per annum from August 6, 1960 to the date of settlement; and

CERTIFICATION OF LOSS

The Commission certifies that DORIS W. PHILLIPS 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 Thousand One Hundred Seven Dollars and Twenty Cents (\$2,107.20) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

OCT 30 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 claimants establish retention of the securities for the losses 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).)