

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

IN THE MATTER OF THE CLAIM OF

MAX H. RANDOLPH

Claim No. CU -0121

Decision No. CU
2865

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 MAX H. RANDOLPH in the amount of \$6,750.00, in connection with bonds known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977. Claimant has been a national of the United States since his naturalization on May 11, 1944.

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.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (See Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p. 52), but other than continued failure to make payments under its obligation, has taken no positive action concerning the rights of bondholders. The question arises whether such nonpayment may be deemed a nationalization, expropriation, intervention, or other taking of, or special measures directed against property of the bondholder within the meaning of Section 503(a) of the Act. An affirmative answer emerges from an examination of the legislative history of H.R. 12259 which, upon enactment, became Public Law 88-666, adding Title V to the International Claims Settlement Act of 1949, as amended,

In the original version of the bill, Section 502(3) read as follows:

(3) The term 'property' means any property, right, or interest, including any leasehold interest.

In considering the amendment which substituted the language appearing in the bill as enacted, and including "debts owed by the Government of Cuba", the following comment was made:

The language inserted will make all Cuban Government debts subject to adjudication, regardless of whether there was outright repudiation or mere failure to pay. (Hearings on H.R. 10327, H.R. 10536, H.R. 10720, H.R. 12259, and H.R. 12260 Before the Subcommittee of the House of Representatives on Inter-American Affairs of the Committee on Foreign Affairs, 88th Cong., 2d Sess., 52 (1964).

Further light is thrown upon the meaning of the term "taking" by the following statement of the House Committee on Foreign Affairs in its favorable report on H.R. 9336, a bill which, upon enactment, amended Public Law 88-666 by deleting language which would have included debts for merchandise furnished or services rendered, without regard to the date on which the merchandise was furnished or the services rendered:

In short, pre- and post-Castro creditor interests of American nationals based on "debts owed by the Government of Cuba . . ." are eligible for consideration by the Foreign Claims Settlement Commission under this title--- so long as the "taking" (i.e. refusal to pay) of such property interests arose for the first time after January 1, 1959. (H.R. Rep. No. 706, 89th Cong., 1st Sess., 3 (1965).

From the above, it is concluded that the failure of the Government of Cuba to make the obligated payments on December 31, 1960, even without express repudiation of the bonds, occurring, as it did, for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gives rise to a valid claim for the amount of the unpaid indebtedness as of that date.

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 loss and if considered shall be considered only to 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 assignments 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.

The bonds in question are Nos. **63122**, 63112, 7746, 7401, 7126, 19530, 870, 71545, 61679, 61678, 28698, 37342, 48502, 74860, 82252, 19662, 69041, 63324, 31111, 31110, 33173, 36228, 36226, 36145, 36690, 36689, 35697, 36329, 15351 and 36309.

On the basis of evidence of record, the Commission finds that claimant acquired the above numbered certificates by purchase on December 31, 1962, April 3, 1964, April 17, 1964, October 6, 1964, October 8, 1964, November 10, 1964 and November 18, 1964 for a consideration of \$1,400.00, \$445.00, \$667.50, \$305.00, \$305.00, \$2,440.00, and \$2,912.50 respectively, a total of \$8,475.00.

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 December 31, 1960. Claimant has 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 type 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, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$8,475.00 (the price he paid) as a result of the failure of the Cuban Government to make obliged payments on December 31, 1960.

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 the dates on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof, as follows:

<u>FROM</u>	<u>ON</u>
December 24, 1962	\$1,400.00
March 30, 1964	445.00
April 15, 1964	667.50
September 30, 1964	305.00
October 2, 1964	305.00
November 4, 1964	2,440.00
November 12, 1964	<u>2,912.50</u>
TOTAL	\$8,475.00

CERTIFICATION OF LOSS

The Commission certifies that MAX H. RANDOLPH 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 Eight Thousand Four Hundred Seventy-Five Dollars (\$8,475.00) with interest thereon at 6% per annum from the aforesaid dates to the date of settlement.

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

AUG 21 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feinberg

Sidney Feinberg, 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. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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.