

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

IN THE MATTER OF THE CLAIM OF

H. ELLEAN BRANHAM
BERNARD M. EPSTEIN
CASPAR M. EPSTEIN
MELBA B. EPSTEIN
RUTH L. EPSTEIN
SOPHIE E. TAKS

Claim No. **CU** - 0137

Decision No. **CU** - 1650

**Under the International Claims Settlement
Act of 1949. as amended**

Counsel for Claimants:
By:

Stone, Epstein, Lynch & Corby
Bernard M. Epstein, Esquire

AMENDED PROPOSED DECISION

By Proposed Decision of April 10, 1968, the Commission denied this claim on the ground that claimants had failed to meet the burden of proof. Additional evidence having been submitted by claimants, and the matter having been considered, it is

ORDERED that the Proposed Decision be and it is hereby amended as follows:

On the basis of all the evidence of record, the Commission now finds that claimant BERNARD M. EPSTEIN, a national of the United States since birth is, and since prior to October 13, 1960 has been the owner of two bonds in the original face amount of \$1,000.00 each, issued by the Cuba Northern Railways Company and known as "First Mortgage Gold Bonds, 4%, due June 30, 1970" (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee. The bonds in question are Nos. TRM 3941 and TRM 3944.

The record discloses that Cuba Northern Railways Company 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 bondholder in such a corporation is entitled to file a claim based upon his interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company, claimant BERNARD M. EPSTEIN suffered a loss in connection with his bonds within the meaning of Title V of the Act. (See Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

Evidence of record establishes that the subject bonds had an outstanding principal balance of \$1,270.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on the bonds on October 13, 1960, the date of loss, was \$1,365.12, including the principal amounts of \$635.00 on each bond, and the interest due on each of the two bonds in the amount of \$47.56 for the period December 1, 1958 to October 13, 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.)

Accordingly, the Commission concludes that the amount of loss sustained by BERNARD M. EPSTEIN shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provision is made for the settlement thereof.

Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that BERNARD M. EPSTEIN 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 One Thousand Three Hundred Sixty-five Dollars and Twelve Cents (\$1,365.12) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

SEP 4 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 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).)

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Claim No. CU -0137

Decision No. CU 1650

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Stone, Epstein, Lynch & Corby
by Bernard M. Epstein, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$20,955.00, was presented by H. ELLEAN BRANHAM, BERNARD M. EPSTEIN, CASPAR M. EPSTEEN, MELBA B. EPSTEIN, RUTH L. EPSTEIN, and SOPHIE E. TAKS and is based upon the asserted loss sustained in connection with the ownership of bonds issued by Cuba Northern Railways Company. There is no evidence of record establishing the nationality of the claimants.

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 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.

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).)

Claim has been made based upon bonds issued by the Cuba Northern Railways Company, but no supporting documentation has been submitted. By Commission letter of June 30, 1966, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

By telephone conversation of August 23, 1967, counsel for claimants advised the Commission that evidence previously suggested to him might not be available. Counsel stated that he would discuss whether to pursue the claim with the claimants, and stated that if claimants decided to pursue the claim, additional evidence would be submitted within 60 days. No communication of any kind has been received by the Commission since August 23, 1967.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba, or that such rights and interests have been continuously owned by United States nationals from the date of loss until the date upon which the claim was filed. 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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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CU-0137