

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

IN THE MATTER OF THE CLAIM OF

LOYAL AMERICAN LIFE INSURANCE COMPANY

Claim No. **CU** -0245

Decision No. **CU** -3220

Under the International Claims Settlement  
Act of 1949, as amended

AMENDED PROPOSED DECISION

Under date of October 30, 1968, the Commission issued a Proposed Decision certifying that claimant sustained a loss in the principal amount of \$25,562.50, representing the loss of 25 Cuban Government bonds. A portion of the claim for \$1,732.21 based upon a bank account with Banco Nacional de Cuba was denied for failure to sustain the burden of proof.

Claimant has submitted supporting evidence with respect to its claim for the bank account.

The record now shows that early in 1959 and in March 1960 claimant attempted to withdraw funds from its bank account through the Royal Bank of Canada, Havana, Cuba branch, but each time the Cuban officials refused to honor these requests. It further appears that claimant's bank account had a balance of 1,732.21 pesos, equivalent to \$1,732.21.

On September 29, 1959, there was published in the Cuban Official Gazette, Cuban Law No. 568, which is drafted in the most general terms. This law, in its preamble, refers to Law 13 of December 23, 1948 which organized the Currency Stabilization Fund, granting it the license to regulate the international exchange. Law 568 proceeds to describe wrongful acts in the field of international exchange which adversely affected the national economy. Specifically, Law 568 then enumerates instances declared to be monetary offenses (Article 1), and provides punishment for the instigator (Article 2).

Paragraph (6) of Article 1 designates as an offense, inter alia, the transferring of funds abroad, by any means, whatever might be the origin of the funds, except in authorized cases, or those which the Currency Stabilization Fund might authorize, through the channels of an associated bank or entity authorized by the National Bank of Cuba. Paragraph (9) of Article 1 prohibits making payments in national money in favor of foreign residents, making payments in bank accounts whose officially named account holders reside abroad, without permission of the Currency Stabilization Fund.

From the foregoing it is clear that not only the transfer of funds to a creditor abroad but also payment to such creditor within Cuba required the permission of the Cuban foreign exchange authority.

The Commission has ascertained, through examination of a number of claims against the Government of Cuba, presented to it, that applications made to the foreign exchange authority of Cuba to transfer funds to the United States were fruitless. Moreover, the Cuban law on foreign exchange control discouraged payment of the amount due even within Cuba in domestic currency.

Upon careful consideration of this matter, the Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof with respect to the rights of claimant herein, was not in reality a legitimate exercise of its sovereign authority to regulate its foreign exchange. Rather, the Commission concludes that the application of this law insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba in the contractual rights which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FGSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant sustained a loss of its bank account in the amount of \$1,732.21 within the meaning of Title V of the Act. In the absence of evidence to the contrary, the Commission further finds that this loss occurred on March 15, 1960.

It is therefore

ORDERED that the Proposed Decision of October 30, 1968 be amended in accordance with the foregoing.

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 this case it is so ordered as follows:

<u>From</u>	<u>On</u>
March 15, 1960	\$ 1,732.21
December 15, 1960	<u>25,562.50</u>
Total	\$27,294.71

It is further

ORDERED that the certification of loss be restated as follows:

CERTIFICATION OF LOSS

The Commission certifies that the LOYAL AMERICAN LIFE 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 Twenty-seven Thousand Two Hundred Ninety-four Dollars and Seventy-one Cents (\$27,294.71) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

DEC 3 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 Amended 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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IN THE MATTER OF THE CLAIM OF

LOYAL AMERICAN LIFE INSURANCE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0245

Decision No. CU 3220

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$35,732.21, was presented by the LOYAL AMERICAN LIFE INSURANCE COMPANY, based upon the asserted loss of Cuban Government bonds and a bank account.

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 record shows that Pan Coastal Life Insurance Company, organized in Alabama, merged into LOYAL AMERICAN LIFE INSURANCE COMPANY (the surviving corporation) in May 1958. Pursuant to the merger, claimant acquired all the assets of Pan Coastal Life Insurance Company including its assets in Cuba. It further appears from the record that claimant was organized under the laws of Alabama. An authorized officer of claimant has stated that at all pertinent times 98% of all its outstanding capital stock was owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record discloses that Pan Coastal Life Insurance Company had on deposit with Cuban authorities, evidenced by an official receipt, 25 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, in the principal amount of \$25,000.00, which bonds became the property of claimant pursuant to the merger in 1958.

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 Commission has determined that the failure of the Government of Cuba to make the obligated payment 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 unpaid indebtedness as of that date. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

Claimant has requested, with respect to its 25 bonds, interest in the amount of \$9,000.00 covering the period June 30, 1958 to June 30, 1965. There is no evidence in the record to establish that the Government of Cuba failed or refused to pay interest on these bonds prior to December 31, 1960, as held in the Maise decision, supra. The Commission therefore finds that the amount of unpaid indebtedness on claimant's bonds on December 31, 1960, the date of loss, was \$1,022.50 for each bond, including the principal amount of \$1,000.00 and the interest due on December 31, 1960 in the amount of \$22.50. Accordingly, claimant's loss with respect to its 25 bonds amounted to \$25,562.50.

With respect to the claim for interest beyond December 31, 1960, interest is being allowed as follows:

The Commission has decided that in the 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.

A portion of this claim is based upon a bank deposit with Banco Nacional de Cuba in the amount of \$1,732.21. Claimant states that "these funds have been frozen and we have been unable to withdraw this money." The record contains a statement from the bank showing that claimant's credit balance as of January 5, 1962 was 1,732.21 pesos, equivalent to \$1,732.21. However, there is no evidence in the record to establish that this bank account was nationalized, intervened or otherwise taken by the Government of Cuba. Nor does it appear from any evidence of record or any other information available to the Commission that either Pan Coastal Life Insurance Company or claimant was nationalized by the Government of Cuba.

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).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to its claim for this bank account. Accordingly, this portion of the claim is denied.

CERTIFICATION OF LOSS

The Commission certifies that the LOYAL AMERICAN LIFE 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 Twenty-five Thousand Five Hundred Sixty-two Dollars and Fifty Cents (\$25,562.50), with interest thereon at 6% per annum from December 31, 1960 to the date of settlement.

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

30 OCT 1968

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

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*Sidney Freidberg*  
\_\_\_\_\_  
Sidney Freidberg, Commissioner

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