

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

IN THE MATTER OF THE CLAIM OF

INSURANCE COMPANY OF NORTH AMERICA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0413

Decision No. CU 3639

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$433,611.65, was presented by INSURANCE COMPANY OF NORTH AMERICA based upon the asserted loss of certain personal property in Cuba.

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.

An officer of claimant has certified that claimant was organized under the laws of Pennsylvania. Another officer has certified that at all times between the date of loss and September 8, 1965, less than 1/2 of 1% of claimant's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that claimant maintained a branch office in Havana, Cuba, from which it conducted its insurance business in that country. The evidence includes: (a) a copy of a statement of assets and liabilities of claimant's branch office as of October 25, 1960; (b) copies of official notifications from the Cuban Government that claimant's branch office had been nationalized; (c) a copy of a statement from the First National City Bank of New York, Havana, Cuba Branch, indicating the balance of claimant's bank account; (d) copies of receipts from the Cuban Treasury Department, evidencing the deposit by claimant of Cuban Government bonds; (e) copies of pertinent exhibits appended to claimant's Federal income tax return for 1960, showing a claimed deduction for the loss of assets in Cuba; and (f) affidavits and statements from officers and employees of claimant concerning the losses asserted in this claim.

On the basis of all the evidence of record, the Commission finds that claimant owned certain assets in Cuba; namely, bonds of the issue known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977, in the aggregate face amount of \$125,000.00; a bank account with the First National City Bank of New York, Havana, Cuba Branch; cash on hand at its Havana office; furniture and fixtures; two automobiles, and accounts receivable due from Cuban nationals.

On October 24, 1960, the Cuban Government published in its Official Gazette, Resolution 3 pursuant to Law 851, which listed as nationalized the INSURANCE COMPANY OF NORTH AMERICA. The Commission therefore finds that all of claimant's assets in Cuba were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its losses as follows:

Furniture & fixtures (estimated salvage value)		\$ 2,036.50
Automobiles, net after depreciation		3,312.59
Petty cash and revenue stamps		2,067.01
Cash in bank		110,696.36
Cuban Government bonds		141,664.55
Accrued interest on bonds		7,413.38
Premiums receivable	\$163,325.08	
Less collections at Home Office	<u>2,641.70</u>	160,683.38
Receivable due from La Cubana, Cia. Nac. de Seguros		4,690.62
Losses paid outside Cuba		771.88
Sundry accounts receivable	\$ 10,105.33	
Less sundry accounts payable	<u>9,829.89</u>	<u>275.44</u>
	Total claimed	\$ 433,611.65

The statement of assets and liabilities of claimant's branch office in Cuba as of October 25, 1960 shows the following:

<u>ASSETS</u>		
Bonds on deposit with Cuban Government		\$ 146,246.55
Petty Cash: Havana	\$ 200.00	
Camaguey	<u>1,500.00</u>	1,700.00
1st National City Bank - Regular a/c	103,220.58	
" " " " " "	<u>7,475.72</u>	110,696.30
Furniture & Fixtures		20,365.00
Automobile		2,730.00
Revenue Stamps		367.00
Premiums Outstanding		163,325.08
Other Accounts Receivable		<u>10,105.33</u>
	Total Assets	\$ 455,535.27

LIABILITIES

Taxes Payable	\$ 874.15
Other Accounts Payable	8,955.74
Unearned Premium Reserve	170,699.78
Outstanding Losses (Reported & Unpaid)	<u>49,401.00</u>
Total Liabilities	\$ <u>229,930.67</u>
Net Assets	\$ <u>225,604.60</u>

This balance sheet also includes the following comment:

"The last accounting from our Havana Service Office reflects the status of our accounts as of September 30, 1960. We have no knowledge of transactions taking place after that date. The above figures represent those balances reported to us, adjusted only for checks drawn outside of Cuba which we presume have been presented for payment. Liability figures for unearned premiums and outstanding losses are estimates, based on the information available to us at this time.

January 19, 1961"

Extracts from claimant's records indicate that claimant paid \$141,664.55 for the Cuban Government bonds in the face amount of \$125,000.00. It further appears that claimant's branch added thereto certain bank and other related charges, thereby arriving at the amount of \$146,246.55, appearing in the October 25, 1960 statement.

The record shows that claimant owned 125 bonds in the face amount of \$1,000.00 each, which had attached coupons in the amount of \$22.50, representing interest payable semiannually on June 30 and December 31 of each year until maturity on June 30, 1977. Claimant has stated that it was last paid interest on account of the coupons for the period ending June 30, 1959 in the amount of \$2,812.50, and has computed the interest due to October 25, 1960 to be \$7,413.38.

The Commission finds that on October 24, 1960, the date of loss, the amount of the unpaid indebtedness on claimant's bonds was \$132,016.25, representing the principal amount of \$125,000.00 and interest in the amount of \$7,016.25.

The bank statement from the First National City Bank of New York, Havana, Cuba Branch shows a credit balance of 136,751.57 pesos as of September 30, 1960, equivalent to \$136,751.57, in favor of claimant. The record, however, includes claimant's statement that reductions were made

for outstanding checks, resulting in a balance of \$110,696.30 in claimant's favor. Accordingly, the Commission finds that claimant's bank account in Cuba had a value of \$110,696.30 on the date of loss.

Furniture and fixtures at the branch office are indicated as having a value of 20,365.00 pesos as of October 25, 1960. Claimant has stated that its records indicate that this item of property had been fully depreciated, and estimated its salvage value to be 10% of the amount shown in the books of the branch office because the furniture and fixtures were still in use. The Commission finds that the fair and reasonable value of the furniture and fixtures was \$2,036.50 on the date of loss.

Said branch statement of October 25, 1960 shows one automobile with a value of 2,730.00 pesos, equivalent to \$2,730.00. Claimant's Home Office records, however, establish that claimant owned two automobiles in connection with its insurance business in Cuba, and that the aggregate value of both automobiles after appropriate reductions for depreciation was \$3,312.59. The Commission finds that the total value of claimant's two automobiles in Cuba was \$3,312.59 on the date of loss.

Claimant's Home Office records corroborate the fact that its branch office in Cuba had 2,067.01 pesos, equivalent to \$2,067.01 in petty cash and revenue stamps on hand. The Commission therefore finds that the value of claimant's petty cash and revenue stamps at its Cuban office was \$2,067.01 on the date of loss.

The branch office records show that as of October 25, 1960 the amount of insurance premiums receivable from Cuban nationals was 163,325.08 pesos, equivalent to \$163,325.08. Claimant's Home Office records, however, show collections received on account of these premiums in the amount of \$2,641.70. Accordingly, the Commission finds that the amount of insurance premiums receivable on the date of loss was \$160,683.38.

On the basis of claimant's Home Office records, the Commission finds that its branch in Cuba also owned an account receivable due from a Cuban entity, La Cubana, Cia. Nacional de Seguros, in the amount of \$4,690.62 on the date of loss.

Claim is also made for \$771.88, appearing in the records of claimant's Home Office, representing "Losses paid outside Cuba on risks located in Cuba." This item is not shown in the branch office records, and no further information or evidence has been submitted to support this portion of the claim. It has been neither asserted nor established that this item represents an account receivable validly due from a Cuban national by virtue of subrogation. Nor has it been established that this item constituted "property," within the meaning of Section 502(3) of the Act, which was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba. For the foregoing reasons this portion of the claim is denied.

The record shows that claimant's branch owned other sundry accounts receivable due from Cuban nationals in the amount of 10,105.33 pesos, equivalent to \$10,105.33. In computing its claim, claimant has reduced this amount by \$9,829.89 for sundry accounts payable of its branch.

It is noted that claimant did not own a legal entity in Cuba, but carried on insurance business through a branch office. Thus, we are not dealing here with the nationalization of a Cuban corporation in which case its value could be derived by subtracting its liabilities from its assets. The Commission, however, consistently has not reduced the value of a corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for taxes owing to the Republic of Cuba which the Commission concluded was appropriate on the theory of set-off (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the corporation is or may still be liable for such liabilities.

For the foregoing reasons, no reduction is being made on account of any of the branch's liabilities, except for taxes due Cuba in the amount of \$874.15, as shown in the branch's statement of assets and liabilities as of October 25, 1960.

The Commission finds that the aggregate value of claimant's assets in Cuba was \$425,607.98, and that its net loss after reduction for Cuban taxes was \$424,733.83, within the meaning of Title V of the Act, as follows:

ASSETS

Bonds		\$132,016.25	
Bank deposits		110,696.30	
Furniture & fixtures		2,036.50	
Automobiles		3,312.59	
Petty cash & stamps		2,067.01	
Premiums receivable		160,683.38	
Accounts receivable	\$ 4,690.62		
Sundry receivables	<u>10,105.33</u>	<u>14,795.95</u>	
Total Assets			\$425,607.98
Less Cuban taxes payable			<u>874.15</u>
Net Loss			<u>\$424,733.83</u>

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 in this case.

CERTIFICATION OF LOSS

The Commission certifies that INSURANCE COMPANY OF NORTH AMERICA 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 Hundred Twenty-four Thousand Seven Hundred Thirty-three Dollars and Eighty-three Cents (\$424,733.83) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

7 MAY 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)