

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

IN THE MATTER OF THE CLAIM OF

COMMERCIAL INSURANCE COMPANY
OF NEWARK, N. J.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0487

Decision No. CU 3665

Counsel for claimant:

Lee, Mulderig & Celentano
By Florindo M. DeRosa, Esq.

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 \$323,517.65, was presented by COMMERCIAL INSURANCE COMPANY OF NEWARK, N. J., 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.

Claimant corporation, by an authorized officer, has certified that claimant was organized under the laws of New Jersey and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. That officer has also certified that as of February 16, 1967 all of claimant's 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 record shows that claimant conducted an insurance business in Cuba through a general agent, a Cuban entity. The evidence includes a copy of a statement from the Chase Manhattan Bank, Havana Branch, indicating claimant's bank balance as of July 1, 1960; extracts from claimant's books and records; copies of stock certificates representing claimant's ownership of 18 shares in Financiera Nacional de Cuba; a receipt, dated May 8, 1958, from the Banco Continental Cubano, evidencing claimant's deposit of said 18 shares of stock with that bank; affidavits from officials of claimant and an official of claimant's general agent, submitted to the Department of State; as well as statements of officials of claimant to the Commission concerning this claim.

The Commission finds on the basis of the evidence of record that claimant owned certain items of personal property in Cuba; namely, 2 time deposit accounts with the Chase Manhattan Bank, Havana Branch, a bank account with the Banco Continental Cubano, 18 shares of stock in Financiera Nacional de Cuba, and a debt due from its general agent in Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the COMMERCIAL INSURANCE COMPANY OF NEWARK, N. J. The Commission finds that claimant's assets in Cuba were nationalized on October 24, 1960 within the meaning of Title V of the Act, except as noted below.

Claimant has computed its claim as follows, the Cuban peso being on a par with the United States dollar:

Bank Deposits:

Banco Continental Cubano	\$ 60,758.39
Chase Manhattan Bank, Havana Branch	92,695.43
18 shares of stock in Financiera Nacional de Cuba	1,800.00
Debt due from claimant's general agent	44,983.83
4% bonds of Financiera Nacional de Cuba, Havana Aqueduct, 1954-1975 (face amount \$125,000.00)	<u>123,280.00</u>
Total	<u>\$323,517.65</u>

The Commission finds on the basis of the evidence of record that claimant owned a bank account with the Banco Continental Cubano, having a value of \$60,758.39, and two time deposits with the Chase Manhattan Bank, Havana Branch, having a value of \$92,695.43. Accordingly, the Commission concludes that the aggregate value of claimant's bank deposits was \$153,453.82 on October 24, 1960, the date of loss.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders of this entity. The Commission found that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its liabilities were assumed by Cuba; and that a claim for such loss arose under Title V of the Act on August 17, 1960, the date of liquidation. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.)

The Commission finds that the amount of the unpaid debt owing to claimant on August 17, 1960 on account of its interests in Financiera Nacional de Cuba was \$1,800.00.

The record establishes and the Commission finds that the amount due claimant from its general agent in Cuba was \$44,983.83 on October 24, 1960, the date of loss.

The remaining portion of the claim is based upon 4% bonds of Financiera Nacional de Cuba, Havana Aqueduct, 1954-1975, in the face amount of \$125,000.00. In an affidavit, dated February 3, 1964, from an officer of claimant's general agent, it was stated that in order to do business in Cuba, claimant was required to deposit certain securities with the Cuban Treasury Department, and that claimant borrowed the bonds from Banco Nunez, a presently nationalized Cuban corporation, and deposited them pursuant to that requirement.

On several occasions, the Commission suggested the submission of evidence to establish that claimant owned the bonds on the date of loss. No evidence concerning claimant's interest in the bonds has been submitted. Under date of April 1, 1969, counsel for claimant stated "With respect to the situation concerning the 'borrowed' bonds, we are still attempting to obtain information."

Upon consideration of the entire record, the Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in said bonds on the date of loss, and because it further appears that the bonds were borrowed from what is now a nationalized Cuban corporation. Accordingly, the portion of the claim based upon the bonds is denied. (See Claim of Transamerica Insurance Company, Claim No. CU-1362.)

The Commission concludes that claimant sustained a loss within the meaning of Title V of the Act in the aggregate amount of \$200,237.65.

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 respective dates 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 as follows:

<u>FROM</u>	<u>ON</u>
August 17, 1960	\$ 1,800.00
October 24, 1960	<u>198,437.65</u>
Total	<u>\$200,237.65</u>

CERTIFICATION OF LOSS

The Commission certifies that COMMERCIAL INSURANCE COMPANY OF NEWARK, N. J. 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 Hundred Thousand Two Hundred Thirty-seven Dollars and Sixty-five Cents (\$200,237.65) 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 Proposed
Decision of the Commission

MAY 21 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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).)