

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

IN THE MATTER OF THE CLAIM OF

RUTH ANN BIRN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1018

Decision No. CU/428

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 \$1,608.25 was presented by RUTH ANN BIRN, and is based on her interest in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since her birth.

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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of three bonds, each in the original face amount of \$1,000.00, issued by the Cuba Railroad Company and known as "Improvement and Equipment Gold Bonds, 4%, due June 30, 1970" issued under an Indenture of July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, with Chemical Bank New York Trust Company as Successor Trustee. The bonds in question are Nos. M 1307, M 2764, and M 3833.

By Indenture dated July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, the Cuba Railroad Company issued Dollar bonds secured by mortgage upon the realty and equipment of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were reissued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance.

The Commission further finds that claimant is, and since prior to October 13, 1960, has been the owner of two bonds, each in the original face amount of \$1,000.00, issued by the Cuba Railroad Company, and known as "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970" issued under an Indenture of March 10, 1922 and a Supplemental Indenture dated July 1, 1952, with the First National City Bank of New York as Successor Trustee. The bonds in question are Nos. TRM 70 and TRM 71.

By Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, the Cuba Railroad Company issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, such bonds were reissued

as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each of these \$1,000.00 bonds was \$635.00, with interest at 4% per annum to be paid on the principal balance.

The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly-owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act which defines the term "national of the United States" as including "(B) 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 discloses that the last payment of interest on the "Improvement and Equipment Gold Bonds" was made on November 1, 1958 and the last payment of interest on the "First Lien and Refunding Bonds, Series A", was made on December 1, 1958. The properties of the Cuba Railroad Company were listed as nationalized in Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represented debts which were a charge upon nationalized property, as defined in Section 502(3) of the Act.

The Commission concludes that, as a result of the nationalization of properties of the Cuba Railroad Company, claimant suffered a loss in connection with her bonds within the meaning of Title V of the Act. (See the Claim of Edgar F. Corliss, FCSC Claim No. CU-0785, and the Claim of Albert I. Harris, FCSC Claim No. CU-2398.)

The Commission finds that the total amount of the unpaid indebtedness on the bonds of the claimant was \$3,419.16, including the principal amount of \$635.00 on each of the five bonds, the interest due on each of the three "Improvement and Equipment Gold Bonds" from November 1, 1958 to October 13, 1960 in the amount of \$49.68, and the interest due on each of the two "First Lien and Refunding Bonds" from December 1, 1958 to October 13, 1960 in the amount of \$47.56.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant 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 provisions are made for settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that RUTH ANN BIRN suffered a loss, as a result of action 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 Three Thousand Four Hundred Nineteen Dollars and Sixteen Cents (\$3,419.16) 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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission, which was entered as the final
decision on MAY 17 1968

Francis Thaddeus

Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The above listed certificates and/or bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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).)