

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

IN THE MATTER OF THE CLAIM OF

JOHN M. McKENNA
MARGARET A. McKENNA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1545

Decision No. CU **1776**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOHN M. McKENNA and MARGARET A. McKENNA based upon the loss of interests in bonds issued by the Cuba Northern Railways Company and Cuba Railroad Company. Each claimant has been a national of the United States since 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 claimants are, and since prior to October 13, 1960, have been the owners as joint tenants with the right of survivorship of a bond in the original face amount of \$1,000.00, issued by the Cuba Northern Railways Company and known as a "First Mortgage Gold Bond, 4%, due June 30, 1970" (originally First Mortgage Gold Bond, 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 bond in question is No. TRM 26.

On the basis of additional evidence of record, the Commission also finds that claimants are, and since prior to October 13, 1960, have been the owners as joint tenants of a bond, in the original face amount of \$1,000.00, issued by the Cuba Railroad Company, and known as "First Lien and Refunding Bond, 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 bond in question is No. TRM 1.

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."

Consolidated Railroads of Cuba also owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. The latter in turn owned the majority interest in Guantanamo and Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. Thus, none of these railroads qualify as a national of the United States under Section 502(1) of the Act.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company", claimants surrendered their 5-1/2% Cuba Northern Railways Gold Bond and received, in exchange, a First Mortgage Gold Bond, 4%, due June 30, 1970. The interest on this bond was payable on June 1 and December 1 of each year. The last payment of interest on this bond was made on December 1, 1958.

The record shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimants' bond, therefore, represented the debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company, claimants suffered a loss in connection with their bond, 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 Cuba Northern Railways Company bond had an outstanding principal balance of \$635.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on the Cuba Northern Railways Company bond on October 13, 1960, the date of loss, was \$682.56, including the principal amount of \$635.00, and the interest due in the amount of \$47.56 for the period December 1, 1958 to October 13, 1960.

The Cuba Railroad Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were re-issued 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 record discloses that the last payment of interest on the Cuba Railroad Company bond 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. Claimants' 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 the properties of the Cuba Railroad Company, hereinbefore noted, claimants suffered a loss in connection with the Cuba Railroad Company bond within the meaning of Title V of the Act. (See Claim of Albert I. Harris, Claim No. CU-2398.)

The Commission finds that the total amount of the unpaid indebtedness on the Cuba Railroad Company bond was \$682.56, including the principal amount of \$635.00, and the interest due from December 1, 1958 through October 13, 1960, in the amount of \$47.56, and that the total loss sustained by claimants for both bonds is \$1,365.12.

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-1644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimants 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 settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JOHN M. MCKENNA and MARGARET A. MCKENNA 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 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

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed certificates and/or bonds may have been returned to claimants 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).)