

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

IN THE MATTER OF THE CLAIM OF

PHILIP C. NESBAUM

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1651

Decision No. CU

2145

Counsel for claimant:

Murray Roth, Esq.

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 PHILIP C. NESBAUM and is based upon the asserted loss of interests sustained in connection with the ownership of common stock interest in Cia. Azucarera Vertientes-Camaguey de Cuba and in bonds issued by the Cuba Railroad. Claimant has been a national of the United States since his naturalization on January 24, 1913.

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 owned 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 PHILIP C. NESBAUM is, and since prior to October 13, 1960, has been the owner of five bonds, 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 bonds in question are numbered M733, M735, M736, M741, and M974. The record discloses that the last payment of interest on the bonds was made on December 1, 1958.

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 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)(B) of the Act which defines the term "national of the United States" as including 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 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, therefore, is entitled to file claim on the bond which represented debts which were a charge upon nationalized property, as defined in Section 502(3) of the Act. (See 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 \$3,412.80, including the principal amounts of \$635.00 on each bond, and the interest due on each bond from December 1, 1958 through October 13, 1960, in the amount of \$47.56.

On the basis of evidence of record, the Commission also finds that claimant is and since prior to August 6, 1960, has been the owner of 100 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba). The stock in question is represented by certificate No. M1968.

The record discloses that Cia. Azucarera Vertientes-Camaguey de Cuba was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180).

In determining the value of the interest owned by claimant in Cia. Azucarera Vertientes-Camaguey de Cuba, the Commission has considered the appraisals by Parajon e Hijo, balance sheets for the years 1957, 1958, 1959 and 1960, the annual reports to stockholders for those years, and other evidence of record submitted by the Company. On the basis of the entire record, the Commission concludes that the dollar loss sustained by Cia. Azucarera Vertientes-Camaguey on August 6, 1960, was \$66,990,148.48, and the loss per share for each of the 1,443,921 shares of common stock was \$46.3946.

Accordingly, in the instant claim, the Commission finds that claimant as holder of shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba suffered a loss in the amount of \$4,639.46 within the meaning of Title V of the Act, as a result of the nationalization of Cia. Azucarera Vertientes-Camaguey de Cuba by the Government of Cuba on August 6, 1960. (See Claim of Ruth Anna Haskew, Claim No. CU-0849).

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, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amounts of loss sustained by the claimant shall be increased by interest thereon at the rate of 6% per annum from the following dates of loss, to the date on which provisions are made for settlement thereof:

\$3412.80	from	October 13, 1960
\$4,639.46	from	August 6, 1960

CERTIFICATION OF LOSS

The Commission certifies that PHILIP C. NESBAUM 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 Eight Thousand Fifty-Two Dollars and Twenty Six Cents (\$8,052.26) 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

**JUL 24 1968**

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

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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 or 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 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).)