

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

IN THE MATTER OF THE CLAIM OF

H. ROBERT PENNINGTON, SR.
LOIS M. PENNINGTON

Claim No. CU -1858

Decision No. CU

2962

Under the International Claims Settlement
Act of 1949, as amended

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 \$45,000.00, was presented by H. ROBERT PENNINGTON, SR. and LOIS M. PENNINGTON and is based upon an asserted loss sustained in connection with the ownership of a participation interest in Cuban Venezuelan Oil Voting Trust. Claimants have been nationals of the United States since their respective births.

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.

As is fully set forth in the original decision involving the Cuban Venezuelan Oil Voting Trust (see Claim of Felix Heyman, Claim No. CU-0412 which is hereby incorporated herein and made a part hereof by reference), this type of claim for loss of a stock ownership is compensable under the conditions and facts set forth in Heyman. There is no need to again detail herein the reasons for such a determination or the method arrived at in determining the value per unit of participation which comes to \$0.11971 per unit, or that the date of loss with respect to interested parties was November 23, 1959.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

On the basis of evidence of record, the Commission finds that claimants purchased 500 participation units of Cuban Venezuelan Oil Voting Trust on April 5, 1961 for \$45.00, 4,000 units on October 3, 1961 for \$400.00, and 500 units on October 12, 1961 for \$45.00.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. As stated, the loss occurred on November 23, 1959. Claimants have been unable to obtain information or

evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the dates on which claimants acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimants, upon their purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that they succeeded to and suffered a loss in the amounts of \$45.00 as of April 5, 1961, \$400.00 as of October 3, 1961, and \$45.00 as of October 12, 1961, for a total loss of \$490.00, as a result of the nationalization of the Cuban Venezuelan Oil Voting Trust on November 23, 1959.

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.)

The Commission concludes, however, that the amount of loss sustained by claimants herein shall be increased by interest thereon at the rate of 6% per annum from April 5, 1961 as to \$45.00, from October 3, 1961 as to \$400.00, and from October 12, 1961 as to \$45.00, the dates on which claimants acquired this claim, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that H. ROBERT PENNINGTON, SR. and LOIS M. PENNINGTON jointly succeeded to and 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 total amount of Four Hundred Ninety Dollars (\$490.00), with interest thereon at the rate of 6% per annum from the respective dates of purchase to the date of settlement.

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

AUG 29 1968

Leonard v. B. Sutton
Leonard v. E. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
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 claimants establish retention of the securities for 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].)