

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

IN THE MATTER OF THE CLAIM OF

TOWNSEND M. McALPIN, TRUSTEE
UNDER THE WILL OF
FRANK E. SEELEY, DECEASED

Claim No. CU-1902

Decision No. CU

1865

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, was presented by TOWNSEND M. McALPIN, TRUSTEE UNDER THE WILL OF FRANK E. SEELEY, DECEASED, and is based upon the asserted loss of \$915.63, sustained in connection with the ownership of a stock interest in Compania Litografica de la Habana, S.A. (Havana Lithographing Company), hereinafter referred to as Havana Lithographing. The record discloses that, on August 5, 1949, claimant TOWNSEND M. McALPIN, the surviving trustee, was appointed with two others as Trustees under the Will of Frank E. Seeley, Deceased for the benefit of certain heirs of Frank E. Seeley who are nationals of the United States.

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 holder of 25 shares of 6% Cumulative Convertible Preferred Stock of Havana Lithographing. The certificate representing the shares in question is No. PLH-0488.

The record discloses that Compania Litografica de la Habana, S.A., was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 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. Therefore, claimant is entitled to file this claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The value of the interest owned by claimant in Havana Lithographing is governed by Section B of Article Seven and Section C of Article Eight of the By-Laws of the corporation pertaining to the distribution of corporate assets resulting from winding-up operations.

Section B ("Preference as to Assets") of Article Seven ("Preferred Stock") provides that:

the holders of shares of Preferred Stock then outstanding shall be entitled to be paid twenty-five pesos (\$25.00), legal tender, per share, plus accrued dividends thereon to the date of payment.... These payments to the holders of shares of Preferred Stock must be made before payment is made to the holders of Common Stock.

Accordingly, the holders of the preferred shares outstanding at the time of loss, of which there 22,373.84 shares, would be entitled to \$25.00 per share plus any dividends accrued to October 13, 1960, the date on which Havana Lithographing was nationalized. Information available to

the Commission discloses that three quarterly payments of \$0.375 each were made on January 15, April 15 and July 15, 1960 to the holders of the Preferred Stock, and that the only dividends on the Preferred Stock accrued and unpaid as of October 13, 1960 totalled \$8,390.00. This amount represented the dividends payable October 15, 1960 at \$0.375 per share.

The Commission therefore finds that the dollar loss sustained in connection with ownership of Preferred Stock of the Havana Lithographing is \$25.375 per share. (See Claim of Central West Company, Claim No. CU-3440.)

Accordingly, in the instant claim the Commission finds that claimant as the holder of 25 shares of 6% Cumulative Convertible Preferred Stock of Havana Lithographing, suffered a loss in the amount of \$634.37 within the meaning of Title V of the Act, as a result of the nationalization of Havana Lithographing by the Government of Cuba on October 13, 1960.

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.)

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

CERTIFICATION OF LOSS

The Commission certifies that TOWNSEND M. McALPIN, TRUSTEE UNDER THE WILL OF FRANK E. SEELEY, DECEASED 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 amount of Six Hundred Thirty-Four Dollars and Thirty-Seven Cents (\$634.37) 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

MAY 15 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)

NOTICE TO TREASURY DEPARTMENT: The above listed certificate may have been returned to claimant and no payment should be made until it is resubmitted.