

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

IN THE MATTER OF THE CLAIM OF

FRANCIS R. CUSUMANO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2324

Decision No. CU

784

Counsel for claimant:

Walsh & Levine

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$452,000.00 plus interest, was presented by FRANCIS R. CUSUMANO, and is based upon the asserted loss of bonds issued by The Cuba Railroad Company. Claimant stated that he has been a national of the United States since birth. No evidence has been submitted to establish the nationality of claimant.

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.

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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership and loss of bonds issued by The Cuba Railroad Company. However, claimant submitted no documentary evidence in support of his claim. Accordingly, by Commission letter of July 25, 1967, suggestions were made to claimant, to establish this claim under the Act. The evidence suggested in this correspondence has not been received to date.

On September 5, 1967, counsel was invited to submit the suggested evidence within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. By letter of September 16, 1967, claimant, through counsel, informed the Commission that with respect to ownership, he could physically show the bonds in Florida, but could not bring them to Washington.

On September 25, 1967, and October 6, 1967, the Commission again suggested the submission of evidence in support of this claim. Claimant, through counsel, advised the Commission in a letter dated October 3, 1967, that he would only show the bonds to a representative of the Commission in Florida.

By its letter of October 6, 1967, the Commission suggested that claimant transmit the suggested evidence to the Commission by mail. However, no additional evidence has been received since the claim was filed on April 27, 1967.

Claimant has not established that he was a national of the United States on the date of any loss; he has not submitted the bonds upon which the claim is based; and he has failed to submit proof of the date upon which he acquired the bonds and the purchase price paid therefor. From the foregoing, it is clear that the claimant does not choose to establish his ownership of The Cuba Railroad Company Bonds (See the Claim of Steel Heddle Manufacturing Company, FCSC Claim No. CU-0737).

The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership, by a national or nationals of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

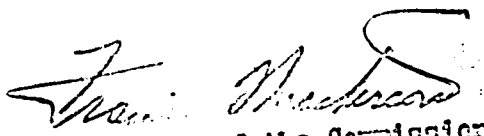
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

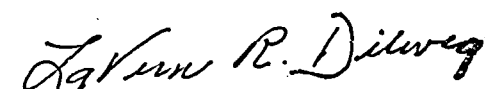
30 NOV 1967


Edward D. Re, Chairman

This is a true and correct copy of the decision of the Commission which was entered as the final decision on JUN 11 1968.


Theodore Jaffe, Commissioner


Clerk of the Commission


LaVern R. Dilweg, Commissioner

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).)