

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

IN THE MATTER OF THE CLAIM OF

FIRST NATIONAL CITY BANK

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2626

Decision No. CU-6191

Counsel for claimant:

Shearman & Sterling
By Robert Carswell, Esq.

Appeal and objections from a Proposed Decision entered May 19, 1971.
No oral hearing requested.

Hearing on the record held October 20, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on May 19, 1971, certifying that claimant suffered a loss as a result of actions of the Government of Cuba, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,305,874.32.

Claimant filed objections to that part of the Proposed Decision which denied a portion of the claim in the amount of \$1,200,000.00, plus accrued interest, based on claimant's participation in a loan to Compania Cubana de Electricidad ("Cuban Electric"). Claimant states that the Commission concluded erroneously that unsecured debts of American corporations cannot be considered unless the debt is a charge on property nationalized by the Government of Cuba. Claimant states that the Act does not bar recognition of bank claims for sums due on loans defaulted because of the Cuban seizure, and refers to the legislative history of the Act, contending that it discloses the intent of Congress to include financial claims, such as the claim against Cuban Electric whether or not it was secured by a mortgage or lien. Claimant further contends that the Cuban Government

explicitly assumed the liabilities of Cuban Electric and that this action created an obligation of the Cuban Government recognizable under the Act. Finally, claimant asserts that the Commission allowed claims for deposits in American banks in Cuba, in spite of the fact that such deposits were not secured by a mortgage or lien.

The Commission has given full consideration to claimant's objections and accompanying brief and finds that Section 505(a) of the Act makes no exceptions for unsecured debts owed to banks or other financial institutions, but simply excludes from consideration by the Commission debts of corporations qualifying as United States nationals, unless such debts were a charge on property nationalized or taken by the Government of Cuba. There is no room for construction of Section 505(a), because the text of the statute is clear, certain and unequivocal (Lewis v. United States 92 U.S. 618, 23 L.Ed. 513 recited in United States v. Turner, U.S.C.A. 2nd Cir. 246 F.2nd 228 (1957)).

On August 6, 1960, the Cuban Government nationalized the properties of Cuban Electric and simultaneously announced that the Cuban State was subrogated in the place and stead of the company with respect to its properties, assets and liabilities. It should be noted, however, that in the first paragraph of Resolution No. 1 which listed Cuban Electric as nationalized, the properties are confined to those existing in the national territory of Cuba. In subrogating the Cuban State as owner of the nationalized properties, the Resolution refers to those properties mentioned previously as nationalized. It is clear and the attitude of the Cuban Government since 1960 confirms that the Cuban Government intended to assume only the assets and liabilities within Cuba, and that it was not concerned with the creditors in the United States.

In our decision in the Claim of Cuban Electric Company, (Claim No. CU-2578) we have certified a loss of \$267,568,413.62. In determining this loss we have not deducted from the assets of the company the obligations to the claimant herein, because this debt is still a liability of Cuban

Electric, not affected by the actions of the Government of Cuba. It is therefore evident that this debt claim could not now be certified as a loss within the scope of the Act, even if Section 505(a) did not bar such certification.

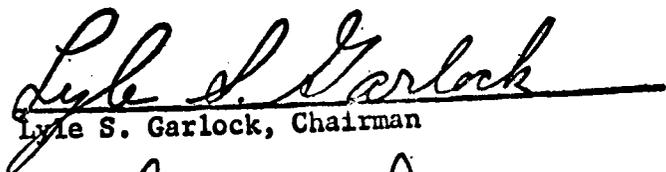
With respect to claimant's observation that the Commission certified to depositors the loss of their accounts in American banks in Cuba, the decision in the Claim of Floyd W. Auld (Claim No. CU-0020, 25 FGSC Semi-ann. Rep. 55 [July-Dec. 1966]) shows that the bank accounts were initially transferred to the Banco Nacional de Cuba where they remained temporarily in effect. Subsequently however, they were confiscated by various actions of the Cuban Government; usually as property of persons who had left Cuba. The Commission allowed these bank account claims because they were based on property confiscated from the claimant depositors and were not regarded as claims against American banks whose assets had been nationalized by the Cuban Government.

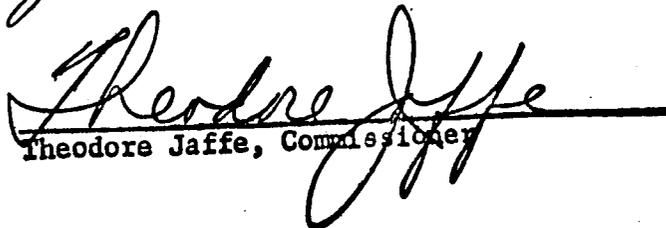
Summarizing, it is concluded that under the provisions of Title V of the Act the Commission is precluded from considering the unsecured debt of the claimant against Cuban Electric.

In view of the foregoing, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of May 19, 1971 is affirmed in all respects.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, for the amended amount of \$3,689,707.90, was presented by FIRST NATIONAL CITY BANK for the asserted loss of fees and expenses for services, and debts owed by enterprises operating in Cuba.

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 502(1) of the Act defines the term "national of the United States" as "(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."

The Commission, based upon the record, previously held that FIRST NATIONAL CITY BANK was a national of the United States within the meaning of Section 502(1)(B) of the Act in Claim No. CU-2628.

Claim is asserted herein for the following:

1. Uncollected fees and expenses for services rendered as trustee, bond paying agent, registrar or transfer agent	\$ 137,948.78
2. Obligations of corporations organized in the United States	3,033,681.87
3. Obligations of other corporations	518,077.25
Total	<u>\$3,689,707.90</u>

1. Uncollected Fees and Expenses

Claimant has asserted a loss in the total amount of \$137,948.78 for uncollected fees and expenses as trustee for certain mortgage bonds and debentures issued by the Cuba Railroad Company, Cuba Northern Railways Company, Cuban Telephone Company and Cuban Electric Company; as paying agent for coupons on mortgage bonds issued by Cuba Northern Railways Company and Cuba Railroad Company; and as registrar and transfer agent for Havana Lithographing Company, Consolidated Railroads of Cuba, Cuba Railroad Company and United Cuban Oil Company.

The Cuba Railroad, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba, a Cuban corporation and thus, with Cuba Northern Railways Company, Consolidated Railroads of Cuba, and Havana Lithographing Company which were all organized under the laws of Cuba, does not qualify as a national of the United States under Section 502(1) of the Act. That section 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.

The Cuba Railroad Company, Consolidated Railroads of Cuba, Cuba Northern Railway Company and Havana Lithographing Company were nationalized by the Government of Cuba by Law 890, published in the Cuban Official Gazette on October 13, 1960.

Cuban Electric Company and Cuban Telephone Company were organized under the laws of the State of Florida and the State of Delaware, respectively, and their assets were taken by the Government of Cuba on August 6, 1960 under Resolution No. 1 under Law 851 of July 6, 1960. The claim against Cuba based upon the loss of a debt owed by Cuban Electric is for unpaid counsel fees and expenses incurred as Trustee under a Mortgage and Deed of Trust dated January 1, 1950. Under the Mortgage and Deed of Trust such a debt was secured by a mortgage on Cuban property owned by Cuban Electric Company which was taken August 6, 1960. The claim for a debt owed by the Cuban Telephone Company may be considered by the Commission since the corporation's physical assets were taken by Cuba and it is no longer operative. (See Claim of International Telephone and Telegraph Corporation, Claim No. CU-2615.)

The claim for a loss for services rendered to United Cuban Oil Inc., however, may not be considered by the Commission since the firm was organized under the laws of the State of Delaware and qualifies as a national of the United States. (See Claim of United Cuban Oil Inc., Claim No. CU-2807.) Further, the debt was established as not being secured by the property of the debtor company. Accordingly the portion of the claim based upon a debt of the United Cuban Oil Inc. must be and is hereby denied.

Claimant has presented copies of invoices for its fees and expenses due from Cuba Railroad Company, Consolidated Railroads of Cuba, Cuba Northern Railways Company, Cuba Telephone Company, Cuban Electric Company

and Havana Lithographing Company in varying amounts totalling \$133,361.00 through December 31, 1966. However only the bills incurred prior to the date of nationalization of the companies or of their assets are considered.

Accordingly, it is concluded that claimant suffered losses within the meaning of Title V of the Act as a result of the taking of the following companies or their assets in the amounts and on the dates as listed:

<u>Debtor</u>	<u>Date of Loss</u>	<u>Amount</u>
Cuba Railroad Company	October 13, 1960	\$14,887.60
Consolidated Railroads of Cuba	October 13, 1960	3,073.60
Cuba Northern Railways Company	October 13, 1960	11,627.52
Havana Lithographing Company	October 13, 1960	117.11
Cuban Electric Company	August 6, 1960	15,054.18
Cuban Telephone Company	August 6, 1960	86.50
	Total	<u>\$44,846.51</u>

The portion of the claim based upon asserted debts incurred by the above-named corporations subsequent to the nationalization of the companies or their assets are not certifiable under the Act and accordingly are denied.

2. Obligations of Corporations Organized in the United States

Claim is asserted for the loss of \$3,033,681.87 for the non-payment of notes by Cuban Electric Company and Cuban Telephone Company with interest computed to May 1, 1967.

According to the record, claimant participated with Bankers Trust Company in unsecured loans to Cuban Electric Company represented by notes to claimant in the principal amount of \$1,200,000.00. Pursuant to Section 505(a) of the Act, debts due from companies which qualify as United States nationals may not be allowed unless they constitute charges on property nationalized, expropriated, intervened, or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) Inasmuch as the Commission has determined Cuban Electric Company to be a national of the United States in the Claim of Cuban Electric Company, Claim No. CU-2578, this portion of the claim must be and hereby is denied.

The record establishes that claimant participated with the Export-Import Bank in loans to Cuban Telephone Company under an agreement dated May 16, 1958.

The total amount of the loan made by claimant amounted to \$890,000.00 on which the interest had been paid to December 15, 1959. Since the Commission has determined that it shall consider claims against Cuban Telephone Company because of its defunct status and its assets were taken by the Government of Cuba on August 6, 1960, claim for this loss may be certified. (See Claim of International Telephone and Telegraph Corporation, supra.)

According to the record, the loan for \$890,000.00 bore interest at the rate of 6% per annum and the last payment of interest was for the period ending December 15, 1959. The amount of loss sustained by claimant on August 6, 1960 is determined to have been \$924,234.20 including interest in the amount of \$34,234.20.

The Commission concludes that claimant suffered a loss in the amount of \$924,234.20 within the meaning of Title V of the Act as a result of the actions of the Government of Cuba on August 6, 1960.

3. Obligations of Other Corporations

Claim is also made for advances to Ferreteria Feito and Cabezon, S.A. and Garcia & Cia. and a loan to Compania Cubana Primadera S.A. in the amounts of \$39,193.59, \$17,769.90 and \$300,000.00, respectively, plus interest to May 1, 1967.

Evidence of record establishes that claimant had advanced credit to Ferreteria Feito and Cabezon, S.A. and Garcia & Cia. which on May 22, 1960 amounted to \$39,193.59 and \$17,769.90, respectively.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the Cuban debtors or customers, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within

the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58[July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that the property of claimant represented by the debts owed in the total amount of \$56,963.49 was lost, as a result of the intervention by the Government of Cuba, on May 22, 1960.

The record also establishes that Compania Cubana Primadera S.A. was indebted to claimant in the amount of \$300,000.00 with interest at the rate of 6% per annum from September 21, 1959 and that the debtor company was intervened by the Government of Cuba on August 7, 1960. The Commission has held that debts of nationalized or intervened corporations which do not qualify as nationals of the United States are within the purview of Title V of the Act.

The Commission therefore finds that claimant suffered a loss in the amount of \$315,830.12 including interest of \$15,830.12 on August 7, 1960 when the debtor company was intervened by the Government of Cuba; and that subsequently claimant received a payment of \$36,000.00 as a pro rata share of a settlement which reduces the loss to \$279,830.12.

Claim has been asserted for the loss of interest on the debts claimed but, since interest is allowed by the Commission from the determined dates of loss, claim for such interest is denied.

Recapitulation

The Commission concludes that claimant suffered losses in the amounts and on the dates as follows:

<u>ON</u>	<u>AS TO</u>
May 22, 1960	\$ 56,963.49
August 6, 1960	939,374.88
August 7, 1960	279,830.12
October 13, 1960	<u>29,705.83</u>
Total	\$1,305,874.32

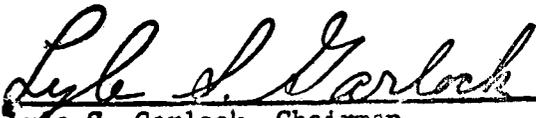
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered from the aforesaid dates.

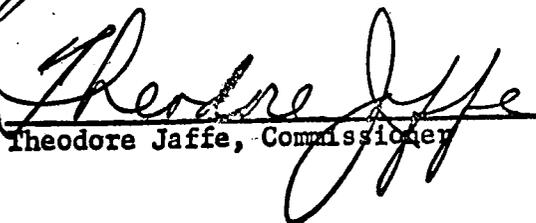
CERTIFICATION OF LOSS

The Commission certifies that FIRST NATIONAL CITY BANK 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 Million Three Hundred Five Thousand Eight Hundred Seventy-Four Dollars and Thirty-Two Cents (\$1,305,874.32) 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

MAY 19 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-2628 involving asserted losses not covered under this Proposed Decision.

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 (1970).)

CU-2626