

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-2629

Decision No. CU- 1868

Counsel for claimant:

Shearman & Sterling
by Robert Carswell, Esq.

Appeal and objections from a Proposed Decision entered May 15, 1968.

Oral hearing requested and held on October 6, 1971.

FINAL DECISION

Under date of May 15, 1968, the Commission issued its Proposed Decision denying this claim for the reason that claimant, as Trustee for bondholders, had not claimed to have suffered losses within the meaning of Title V of the International Claims Settlement Act of 1949, as amended. The claim was in three parts: Part A based upon the failure of Cuba Northern Railways Company, The Cuba Railroad Company, Cuban Electric Company, and Cuban Telephone Company to meet their obligations with respect to certain bonds for which claimant was the Trustee; Part B based upon certain bonds held by claimant as collateral for the benefit of holders of bonds issued by The Cuba Railroad Company and certain stock held as collateral for the benefit of holders of bonds issued by Cuba Northern Railways Company; and Part C based upon certain deposits held by claimant as Trustee for the benefit of holders of Cuban Electric Company bonds.

Claimant objected to the Proposed Decision of the Commission and requested an oral hearing before the Commission which was held on October 6, 1971. At the hearing Robert Carswell, Esq. presented argument for claimant. Counsel asserted that claimant as Trustee for bondholders under the various Trust Indentures was the party in interest to file claim based upon the bonds and by the terms of the Indentures was the owner of the real property mortgaged by the terms of the Indentures upon the default of the issuer of the bonds. However, at the time of the nationalization of the properties of the debtor corporations there had been no default or action taken by the Trustee to take possession of the mortgaged assets. Claimant has admitted that it has no beneficial interest in the security for the bonds and that the claim is asserted as the fiduciary holding the security on behalf of the bondholders.

The Commission has consistently held that the individual bondholders are the proper parties claimant as to the losses suffered as a result of the nationalization of the issuing company (or its assets). (See Claim of Morgan Guaranty Trust Company of New York, Claim No. CU-1594.) The bondholders are the owners of the property upon which this claim is based within the meaning of Section 504 of the Act since the property in question is the debt represented by the bonds. Accordingly, the Proposed Decision is affirmed.

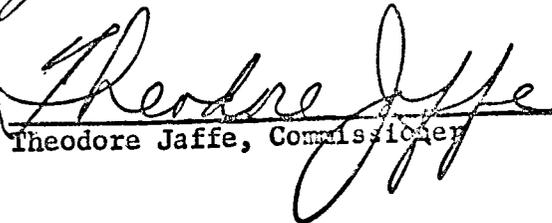
Claimant has asserted that it should be a party claimant since it holds more than \$1,300,000.00 for the benefit of the holders of bonds issued by the Cuban Electric Company under various indentures.

Claimant is not able to establish the number of bonds outstanding nor the share which each bondholder might recover from the funds in its possession. The Commission, under Section 503 of the Act, is charged with determining "the amount and validity of claims by nationals of the United States against the Government of Cuba" and the funds held by claimant are not considered to be within the meaning of the Act.

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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1868

Counsel for claimant:

Shearman & Sterling

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 FIRST NATIONAL CITY BANK, as Trustee, for \$218,110,282.59, plus interest, on behalf of bondholders of bonds issued by Cuba Northern Railways Company, The Cuba Railroad Company, Cuban Electric Company, and Cuban Telephone Company. For purposes of identification, this claim has been divided by the Commission into three parts, referred to hereinafter as "Part A", "Part B", and "Part C".

"Part A" of this claim is based upon the failure of the above four Cuban companies to meet their obligations with respect to their bonds. "Part B" is based upon certain bonds held by claimant as collateral for the benefit of holders of bonds of The Cuba Railroad Company, and upon certain stock held as collateral for the benefit of holders of bonds of Cuba Northern Railways Company. A further portion of the claim, "Part C", is based upon certain time deposits and promissory notes held by FIRST NATIONAL CITY BANK, as Trustee, for the benefit of holders of bonds of Cuban Electric Company.

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 interests 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 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.

Evidence of record, including a detailed statement of the claim and the aforementioned affidavit executed by an officer of claimant corporation, indicates that the claimant has no ultimate beneficial interest as a holder of any of the securities which are the subject matter of this claim; on the contrary, **FIRST NATIONAL CITY BANK** has presented this claim to fulfill its duty to protect the interests of the bondholders, as the holder of legal title to the claims represented thereby, and as Trustee.

Although the claimant herein is the agency through which bondholders might, under other circumstances, have had their rights protected under the bonds issued by Cuba Northern Railways Company, The Cuba Railroad Company, Cuban Electric Company, and Cuban Telephone Company, it does not itself claim herein to have suffered losses within the meaning of Title V of the Act which the Commission might certify to the claimant and to the Secretary of State. Accordingly, the Commission's disposition of the instant claim can only be a denial thereof.

Accordingly, this claim is denied. The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

However, claimant's timely filing of this claim will protect the rights of holders of bonds involved in the claim, to the extent that any such holders who have filed or who may file claims based upon such bonds will have their claims considered by the Commission as timely filed, provided filing is made not later than March 1, 1970, to permit orderly disposition thereof before the termination of the claims program on May 1, 1970; and certifications will be made thereon as appropriate. (See Claim of Morgan Guaranty Trust Company of New York, as Trustee, Claim No. CU-1594.)

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

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).)