

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

IN THE MATTER OF THE CLAIM OF

PAUL EMERY KERN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3090
CU-3091

Decision No. CU -1795

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by PAUL EMERY KERN in the aggregate amount of \$492,025.45, including accrued interest, and are based upon the asserted ownership and loss of his interest in bonds and an accrual certificate issued by the Consolidated Railroads of Cuba. Claimant has been a national of the United States since his naturalization on August 23, 1932.

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 the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of 10 bonds each in the original face amount of 1,000 pesos, and 2 bonds each in the original face amount of 5,000 pesos, issued by the Consolidated Railroads of Cuba, and of an issue known as "3% Cumulative Income Debentures, due October 1, 2001", issued under an Indenture of February 1, 1953, with the United States Trust Company of New York as Trustee. The 1,000 peso bonds in question are Nos. RM 11922 through RM 11925, RM 11955 through RM 11957, and RM 11967 through RM 11969. The 5,000 peso bonds are Nos. RV 7920 and RV 7921.

The Commission further finds that claimant is, and since prior to October 13, 1960, has been the owner of one Accrual Certificate in the face amount of 410,205 pesos, issued by the Consolidated Railroads of Cuba, pursuant to a corporate "Recapitalization Plan", effective February 11, 1953. The Accrual Certificate in question is No. NYRU 1657.

Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), was a Cuban corporation. The Consolidated Railroads of Cuba thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which 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 corporate "Recapitalization Plan" of the Consolidated Railroads of Cuba, adopted by vote of the stockholders of that company on February 11, 1953, provided for the deposit of all shares of 6% Cumulative Preferred stock in the company. In exchange for each share of preferred stock so deposited, the stockholder received the following:

(a) A 3% Cumulative Income Debenture, due in the year 2001, in the face amount of one hundred (100) pesos;

(b) An accrual certificate, without specific maturity date, non-interest bearing, in the face amount of 29 pesos; and

(c) Cash in the net amount of 5.91 pesos after deduction of Cuban taxes.

As of October 1, 1952, the company owed accrued and unpaid dividends on its 6% Cumulative Preferred stock, and the exchange described above was chosen as the method of recapitalization. The time within which to deposit the preferred shares was extended from time to time, the final date for submission being June 15, 1954. As of that date, approximately 255,813 shares had been deposited out of a total of approximately 303,073 shares outstanding.

Consolidated Railroads of Cuba was listed as nationalized by Cuban Law 890, effective October 13, 1960, the date of its publication in the Cuban Official Gazette. The bonds owned by claimant therefore represented a debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra). (See Claim of Edward R. Smith, Claim No. CU-5001.)

A different question is presented, however, with respect to claimant's accrual certificate in the face amount of 410,205 pesos:

Under the terms of the corporate Recapitalization Plan and of the accrual certificate itself, a new order of priority of payment was created, as to the obligations and preferred stock of the company. First in priority were the debts and other obligations of the company, including bonds. Second were the outstanding shares of preferred stock. Third in order, and on par with each other, were the accrual certificates and the accrued and unpaid dividends on the outstanding preferred stock. The holders of common stock were last in order of priority.

Evidence of record, and other information available to the Commission disclose that the value of the real property, equipment and other assets of the Consolidated Railroads of Cuba exceeded its total obligation on debts, bonds, preferred stock, accrual certificates, and accrued and unpaid preferred stock dividends.

The Commission therefore finds that claimant's accrual certificate also represented a debt of a nationalized enterprise, and concludes that, as a result of the nationalization of the properties of Consolidated Railroads of Cuba, claimant sustained a loss in connection with both his certificate and his bonds within the meaning of Title V of the Act. (See Claim of Meyer Lobsenz, Claim No. CU-1005.)

Information available to the Commission establishes that the last payment of interest on the subject debenture was made on April 1, 1959; however, as of that date, the nationalized enterprise owed a

total of 14.3% of the face amount of the debenture for prior accumulation of unpaid interest. Claimant therefore, sustained the loss of the face amount of his bonds, the 14.3% prior accumulation of interest, the interest on the bonds from April 1, 1959 to October 13, 1960, the date of nationalization, and the face amount of his accrual certificate.

As to the dollar value of the bonds, the interest, and the accrual certificate, all expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the date of loss.

The Commission further finds that the amount of unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$23,781.60 including the principal amount of \$20,000.00; and interest due, to and including October 13, 1960 in the amount of \$3,781.62; additionally, the Commission finds that the value of the accrual certificate was \$410,205.00 on that date. Consequently, claimant's total loss was in the amount of \$433,986.62.

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 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 PAUL EMERY KERN 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 Four Hundred Thirty-Three Thousand Nine Hundred Eighty-Six Dollars and Sixty-Two Cents (\$433,986.62) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed bonds/certificates may have been returned to claimant and no payment should be made until they are resubmitted.

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).)