

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

IN THE MATTER OF THE CLAIM OF

**CHEMICAL BANK NEW YORK TRUST COMPANY
INDIVIDUALLY, AND AS TRUSTEE**

Claim No. CU-3425

Decision No. CU-3979

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimant:

White & Case
by W. D. Burgess, Esq.

Appeal and objections from a Proposed Decision entered October 1, 1969. No oral hearing requested.

Hearing on the record held October 14, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on October 1, 1969, 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 \$15,508.25. The remainder of the claim was denied.

Claimant, through counsel, filed objections to that part of the Proposed Decision which denied the claim for services of the Trustee and legal fees, arising after October 13, 1960, the date of nationalization of The Cuba Railroad Company. In the objections, claimant states that the Indenture covering the Improvement and Equipment Mortgage Bonds of 1910 was not cancelled by the Government of Cuba on October 13, 1960, and that the mortgages, liens and charges under the Indenture continued to secure the obligations of the Company recited therein. Claimant further states that if the Government of Cuba had cancelled the charges, such action would be in violation of international law and without legal effect.

With respect to attorneys' fees, claimant asserts that these fees originated from performance of Trustee's duties under the Indenture, and that they represent a loss resulting from actions of the Government.

In considering claimant's objections the Commission has also considered other claims of bondholders of The Cuba Railroad Company. In these claims we held that the bonds represented a debt which was a charge upon nationalized property of the Railroad and that as a result of the nationalization of the properties, claimants suffered a loss within the meaning of Title V of the Act (see Claim of Edgar Corliss, Claim No. CU-0785, Claim of Joseph Gans, Claim No. CU-1720, and Claim of Albert J. Harris, et al, Claim No. CU-2308). In all these claims we found that the bondholders have a valid claim under Section 505(a) of the Act resulting from the nationalization on October 13, 1960 of the properties of The Cuba Railroad Company.

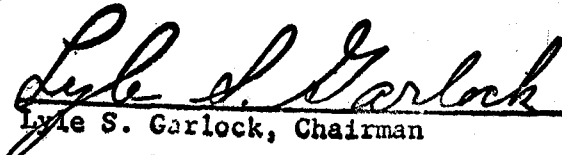
We have, however, also held that debts incurred subsequent to the nationalization of the companies or of their assets are not proper claims under the Act (see Claim of Morgan Guaranty Trust Company of New York, Claim No. CU-1593; and Claim of First National City Bank, Claim No. CU-2626). It is therefore unnecessary to determine whether the security (lien or mortgage) for the service charges under the Indenture continued in existence after nationalization of the properties. Even if the security had not been cancelled, as asserted by the claimant, it would not be of relevance to the issue, because the debts incurred after nationalization are not recognized as losses under Title V of the Act.

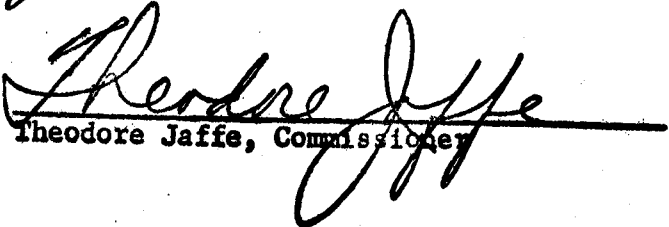
With respect to the legal fees, it should be added that the evidence discloses that they were incurred for assistance given to the claimant by counsel in reviewing possible courses of action against the Cuban Government and in preparing the claim before the Commission. As stated in the Proposed Decision claims for such fees are not within the scope of the Act and have been consistently denied by the Commission. (See Claim of Mary Pauline Seal, Claim No. CU-0059; and Claim of E. R. Squibb & Sons, Claim No. CU-2469.)

The Commission, therefore, finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of October 1, 1969, is affirmed in all respects.

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

OCT 14 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, in the amount of \$8,196,100.36, was presented by the CHEMICAL BANK NEW YORK TRUST COMPANY on its own behalf for annual fee as Trustee and unpaid legal fees, and as Trustee under The Cuba Railroad Company Improvement and Equipment Mortgage indenture of July 1, 1910, as amended and supplemented, for the outstanding amount of the bonds issued under such indenture.

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

Claimant corporation was organized in the State of New York. An officer of the corporation has certified that at all pertinent times more than 50% of its outstanding capital stock was owned by United States nationals. Moreover, the same officer of the corporation has certified that as of July 14, 1960, about 0.6 per cent of its outstanding capital stock was owned by persons who are presumed to be nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Trustee's Fees and Unpaid Legal Fees

The claimant is the Successor Trustee under the Improvement and Equipment Mortgage Indenture dated July 1, 1910 from The Cuba Railroad Company to The New York Trust Company, as Trustee, as supplemented and amended by a Supplemental Indenture dated July 1, 1952 between the parties mentioned, and a Supplemental Indenture dated December 1, 1959, between The Cuba Railroad Company and the claimant.

Section Twenty-sixth of the Indenture of July 1, 1910, the original mortgage, provides, inter alia, as follows:

The Railroad Company agrees to pay to the Trustee from time to time on demand a reasonable compensation for its services under this mortgage, and to repay, with interest, all counsel fees, compensation of attorneys and agents and other expenditures made by the Trustee in accordance with the terms hereof, and to indemnify and save harmless the Trustee against any and all liabilities of any kind which the Trustee may incur in the proper exercise and performance of its powers and duties hereunder; and for such compensation, repayment and indemnification a first lien is hereby imposed in favor of the Trustee upon all the property and funds covered by this mortgage.

On the basis of evidence of record, the Commission finds that claimant was entitled to reasonable compensation, amounting to \$1,700.00 per annum, for its services rendered under the indentures mentioned; and that since August 11, 1958 such fees remained unpaid. The Commission also finds that during the period from June 30, 1959, to June 30, 1960, the claimant paid or became indebted in the amounts of \$1,828.00, \$7,058.75 and \$3,221.50 or a total of \$12,108.25 for legal fees performed pursuant to the duties and obligations of the claimant under the indentures in question.

On October 13, 1960, the assets of The Cuba Railroad Company were nationalized by the Government of Cuba by virtue of Cuban Law No. 890 published that date in the Cuban Official Gazette, resulting in the cancellation of the mortgages by which the payment of the above-mentioned obligations were secured on the Company's property. Accordingly, the Commission concludes that claimant sustained a loss within the scope of Title V of the Act as follows:

Compensation for services under the mortgage indentures for the period from August 11, 1958 to October 13, 1960	\$ 3,400.00
Legal fees for the period from June 30, 1959 to June 30, 1960	<u>12,108.25</u>
	\$15,508.25

Due to the cancellation of the mortgages on October 13, 1960, neither the claimant's fees for services under the indentures nor any legal fees performed pursuant to such indentures were secured by any property of The Cuban Railroad Company in Cuba after that date. Any fee to which the claimant was entitled

for its services under the indentures, or legal fee performed pursuant to such indentures, which arose after October 13, 1960, became an unsecured obligation of The Cuba Railroad Company, a legal entity, organized under the laws of the State of New Jersey, but not qualifying as a United States national. Inasmuch as Section 505(a) of the Act provides, among other things, that a debt owing by an American entity shall be considered only when such debt is a charge on property which has been nationalized by the Government of Cuba, the portion of the claim which is made for unsecured trustee's fees and legal fees arising after October 13, 1960, is not within the purview of Title V of the Act. It is also noted that the Commission has held that a claim for attorney's fees and expenses involved in contesting the taking of property of nationals of the United States by the Government of Cuba is not within the purview of Title V of the Act because it does not involve a loss of property sustained as a result of actions by the Government of Cuba. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469, and Claim of Mathieson Pan-American Chemical Corporation, Claim No. CU-2470.) Accordingly, the portion of the claim which is based upon trustee's fees and legal fees arising after October 13, 1960, must be and it is hereby denied.

Outstanding Amount of Bonds

Claimant has submitted a list of the owners of bonds issued by The Cuba Railroad Company, all of whom, so far as their addresses permitted, have been contacted by the Commission with respect to filing claims based upon such bonds, inasmuch as the Trustee's timely filing protected their rights, provided such individual 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.

It not appearing that claimant is authorized to further pursue claim on behalf of the bondholders concerned, this part of the claim is denied on the ground that as between the Trustee, claimant herein, and the individual bondholder, the latter are the proper parties claimant as to the asserted losses involved with respect to the bonds. (See Claim of Morgan Guaranty Trust Co. of New York, Claim No. CU-1594.)

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CHEMICAL BANK NEW YORK TRUST COMPANY sustained 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 Fifteen Thousand Five Hundred Eight Dollars and Twenty-five Cents (\$15,508.25) with interest thereon 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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)