

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

IN THE MATTER OF THE CLAIM OF

PAN-AMERICAN LIFE  
INSURANCE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3651

Decision No. CU-4212

Counsel for claimant:

Matthew R. Sutherland, Esq.  
Ted Tumminello, Esq.

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Appeal and objections from a Proposed Decision entered November 26, 1969.  
Oral hearing requested.

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Oral hearing held on June 9, 1971

FINAL DECISION

Under date of November 26, 1969, the Commission issued its Proposed Decision on this claim, certifying a loss in the amount of \$7,821,638.55 plus interest in favor of claimant, and denying portions of the claim based on bonds of the Cuban Telephone Company, on debts due from claimant's insureds secured by the cash surrender of their policies, and on good will or going concern value. Subsequently, claimant objected, submitted new evidence and requested an oral hearing which was held on June 9, 1971.

At the hearing an actuary, A. Anthony Autin, Jr., testified on behalf of claimant, and counsel presented oral argument.

Upon consideration of the new evidence, including the testimony and arguments offered at the oral hearing, in light of the entire record, the Commission finds as follows:

1. Bank Accounts

The Commission finds that on October 24, 1960, the date of loss, claimant owned bank accounts in Cuba having an aggregate value of \$406,551.98, rather than \$107,248.80 as set out in the Proposed Decision.

2. Cuban Telephone Company Bonds

The Commission finds that claimant owned bonds of the Cuban Telephone Company in the face amount of \$500,000.00.

The Commission has held that a claim based upon debts of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. In the Claim of International Telephone and Telegraph Company, (Claim No. CU-2615), the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960. Accordingly, the Commission finds that on August 6, 1960, claimant sustained a loss in the amount of \$500,000.00

3. Taxes Owed to Cuba

The Commission finds that on October 24, 1960, the date of loss, claimant was indebted to Cuba in the amount of \$6,059.55, which must be deducted in determining claimant's losses under Title V of the Act, rather than \$16,850.34, as set out in the Proposed Decision.

4. Goodwill or Going Concern Value

The record shows that over the years claimant had built up a viable organization in Cuba through which claimant conducted its insurance business in that country. Claimant had expended time, effort and funds in creating an organization which was producing profits on the date of loss and which would continue to do so in the future.

The Commission therefore finds that on the date of loss claimant owned two assets that were not shown in its books and records. One such asset is claimant's equity in the insurance contracts it had issued; the other such asset is not goodwill or going concern value, but rather, is the value of its business organization in Cuba, its "going business" value.

Equity in Insurance Contracts

Claimant has submitted a detailed memorandum and supporting schedules prepared following a thorough analysis of its Cuban operations. Employing projections beginning January 1, 1960, the analysis projects profits for the years 1960 through 1975 based on claimant's issued insurance contracts.

The resulting amounts each year are then discounted at the rate of 4% per annum to arrive at the values on October 24, 1960, the date of loss, which aggregate \$1,498,847.00. These are in effect, reserves.

Upon consideration of the entire record, the Commission finds that claimant's projections are fair and reasonable, except as to the year 1960, for which the Commission cannot agree as to the asserted discount rate. Inasmuch as the date of loss was October 24, 1960, the Commission finds no valid basis for including 1960 in this computation. With respect to the discount rate, the Commission has held in other claims against Cuba in which projected amounts for future years were concerned that a 12% per annum discount rate is appropriate. (See Claims of Moa Bay Mining Company, et al., Claim Nos. CU-2619 and CU-2573.) The Commission finds that a discount rate of 12% per annum should be applied in this case. The Commission therefore finds that claimant's equity in the insurance contracts had the following aggregate value on October 24, 1960:

<u>Year</u>	<u>Gross Equity</u>	<u>Net Equity</u>
1961	\$ 211,075.00	\$188,459.79
1962	189,697.00	151,225.31
1963	170,971.00	121,693.74
1964	153,874.00	97,789.70
1965	138,486.00	78,580.70
1966	124,638.00	63,145.47
1967	112,174.00	50,741.80
1968	100,956.00	40,774.41
1969	90,861.00	32,765.39
1970	81,775.00	26,329.34
1971	73,597.00	21,157.37
1972	66,238.00	17,001.64
1973	59,614.00	13,661.98
1974	53,652.00	10,978.27
1975	48,287.00	8,821.84
	<u>\$1,675,895.00</u>	<u>\$923,126.75</u>

Accordingly, the Commission finds that the aggregate value of claimant's contracts on October 24, 1960 was \$923,126.75.

Going Business Value

Considering the fact that claimant had 30 trained agents in Cuba operating through a well-developed business organization, the Commission finds that claimant's valuation of its "going business" value is fair and reasonable, particularly since the record shows that its investment in each of the agents

was \$10,875.00. The Commission therefore finds that claimant's organization in Cuba had a "going business" value of \$187,941.00 on October 24, 1960.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
4-1/2% Bonds, 1937-1977	October 24, 1960	14,200.34
4% Bonds, 1953-1983	October 24, 1960	\$1,457,000.00
4% Bonds, 1950-1980	October 24, 1960	182,280.00
2-1/2% U. S. Treasury Bonds	October 24, 1960	7,135.00
Cuban Telephone Company Bonds	August 6, 1960	500,000.00
Cuban Electric Company Mortgage Bonds	August 6, 1960	508,472.22
Financiera Nacional de Cuba Mortgages	August 17, 1960	62,500.00
Bank Accounts	October 14, 1960	5,471,399.16
Agents' Balances	October 24, 1960	406,551.98
Receivables	October 24, 1960	10,251.98
Furniture and Fixtures	October 24, 1960	9,279.79
Petty Cash	October 24, 1960	8,571.60
Equity in insurance Contracts	October 24, 1960	150.00
"Going Business"	October 24, 1960	923,126.75
		<u>187,941.00</u>
	Total	<u>\$9,748,859.82</u>

The Commission reaffirms its conclusion that the taxes claimant owed to Cuba in the amount of \$6,059.55 should be deducted from the losses that occurred on October 24, 1960. Therefore, claimant's losses on October 24, 1960 amounted to \$3,200,428.89 (\$3,206,488.44 minus \$6,059.55).

Claimant is also entitled to interest at the rate of 6% per annum from the respective dates of loss to the date of settlement, as follows:

<u>FROM</u>	
August 6, 1960	\$1,008,472.22
August 17, 1960	62,500.00
October 14, 1960	5,471,399.16
October 24, 1960	<u>3,200,428.89</u>
Total	<u>\$9,742,800.27</u>

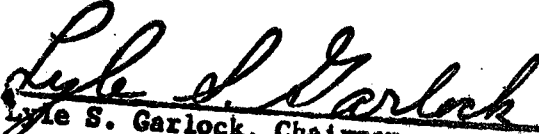
Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the remainder of the Proposed Decision as amended herein, is affirmed.

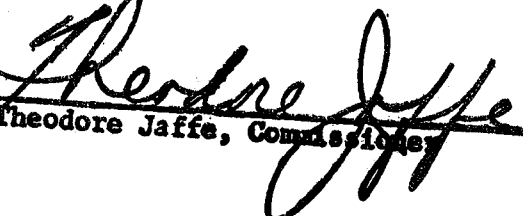
CERTIFICATION OF LOSS

The Commission certifies that PAN-AMERICAN LIFE INSURANCE COMPANY 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 Nine Million Seven Hundred Forty-Two Thousand Eight Hundred Dollars and Twenty-Seven Cents (\$9,742,800.27) 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 Final  
Decision of the Commission

**JUL 6 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

PAN-AMERICAN LIFE  
INSURANCE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3651

Decision No. CU 4212

Counsel for claimant:

Matthew R. Sutherland, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$9,403,933.62 was presented by PAN-AMERICAN LIFE INSURANCE COMPANY based upon the nationalization of its assets 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)(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.

The record shows that claimant, a mutual insurance company whose stock is owned by its policyholders, was organized under the laws of Louisiana and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that as of June 30, 1967, 76.6% of claimant's outstanding capital stock was owned by nationals 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.

It appears from the record that claimant had engaged the services of agents through whom it conducted its insurance business in Cuba, in the nature of a branch office. In connection with these activities, claimant owned certain items of property in Cuba, discussed in detail below.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the PAN-AMERICAN LIFE INSURANCE COMPANY. The Commission finds that claimant's property in Cuba was nationalized on October 24, 1960, within the meaning of Title V of the Act, except as noted below.

Originally, claimant computed its claim as follows:

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1. Excess of Assets Seized over Liabilities and Reserves		\$ 1,456,223.16
2. Fair Value of Contracts Expropriated		1,117,379.00
3. Share of Home Office Expenses		130,000.00
4. Payments made on Monetary Agreement Policies	\$ 19,205.08	
5. Interest paid on above payments and on Dollar Policies	52,146.09	
6. Attorney Fees and Court Costs of Policyholders Paid	<u>21,356.60</u>	
7. Sum of items 4, 5, and 6		92,707.77
8. Fees and Court Costs of Attorneys for Pan-American Life Insurance Company		<u>56,967.32</u>
TOTAL		<u>\$ 2,853,277.25</u>

Claimant also indicated that it reserved its right to increase its claim for additional losses in the event it was held liable, under its insurance policies issued in Cuba, subsequent to the date its properties, including reserves for such losses, were taken by the Government of Cuba. When it later appeared to claimant that it would be held liable for such policies in the courts of the United States, claimant increased its claim by \$6,560,212.39. Further increases in the claim pertained to items 4, 5 and 6 above, raising the claim from the amounts originally claimed for said items to \$161,404.22, \$80,533.13 and \$28,181.72, respectively (an aggregate increase of \$177,411.30). Claimant also withdrew two portions of its claim; namely, items 3 and 8 above, in the aggregate amount of \$186,967.32. Accordingly, the amount claimed was increased by \$6,737,623.69 and reduced by \$186,967.32, leaving the amended claim in the amount of \$9,403,933.62.

Bonds and Stock

On the basis of affidavits from the Treasurer of claimant, supported by certified extracts from claimant's books and records, the Commission finds that claimant owned the following bonds:

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- (a) 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, in the face amount of \$14,000.00;
- (b) 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, in the face amount of \$476,000.00;
- (c) 4% Bonds of the same type as (b) above, in the face amount of 981,000.00 Cuban pesos, the equivalent of \$981,000.00, the Cuban peso being on a par with the United States dollar;
- (d) 4% Bonds of the Public Debt of Cuba, 1950-1980, in the face amount of \$180,000.00 (pesos);
- (e) 2-1/2% United States Treasury Bonds, due December 15, 1969, in the face amount of \$8,000.00;
- (f) Bonds of the Cuban Telephone Company, in the face amount of \$500,000.00;
- (g) First Mortgage Bonds of the Cuban Electric Company, Series C and D, in the aggregate face amount of \$500,000.00 (pesos); and
- (h) 625 shares of stock in Financiera Nacional de Cuba, with a par value of \$100.00 per share (pesos).

The record shows that all of the foregoing bonds and stock were on deposit with the First National City Bank of New York, Havana Branch, Cuba.

With respect to the value of the above items, the Commission finds as follows:

(a) 4-1/2% Bonds, 1937-1977

The Commission has found that Cuba first defaulted with respect to this debt on December 31, 1960, when it failed to make a semiannual payment of interest in the amount of \$22.50 for each \$1,000.00 face amount of such bonds. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.) The Commission, therefore, finds that on October 24, 1960, the date of loss, the value of claimant's bonds was \$14,200.34 representing \$14,000.00 in principal amount and interest in the amount of \$200.34.

(b) and (c) 4% Bonds, 1953-1983

The evidence establishes that the Government of Cuba defaulted on the payment of interest on the 4% Veterans, Court and Public Works bonds of 1953-1983 on May 1, 1961, the last payment of interest having been made for the period ending November 1, 1960. (See Claim of Westchester Fire Insurance Company, Claim No. CU-1703.) The Commission, therefore, finds that on October 24, 1960, the date of loss, Cuba owed claimant \$1,457,000.00 with respect to these 4% bonds.

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(d) 4% Bonds, 1950-1980

Evidence available to the Commission establishes that the 4% bonds of 1950-1980 had attached interest coupons in the amount of \$20.00 each, payable semiannually on June 30 and December 31, with respect to each \$1,000.00 bond, until maturity on June 30, 1980. (See Claim of Hartford Fire Insurance Company, Claim No. CU-0021.) Based upon extracts from claimant's records, the Commission finds that on October 24, 1960, the date of loss, Cuba owed claimant \$182,280.00, representing \$180,000.00 in principal and interest in the amount of \$2,280.00.

(e) 2-1/2% United States Treasury Bonds

The record shows that the 2-1/2% United States Treasury Bonds were negotiable bearer bonds, which could be held until maturity or sold on the market, since they are quoted daily. Since these bonds could fall into the hands of a holder in due course, the United States Treasury Department advised that it could not replace any such bonds. It further appears that on October 24, 1960, the date of loss, these bonds had a value of \$89-6/32 per \$100.00 of face value, equivalent to \$89.1875. The Commission, therefore, finds that the value of the bonds on the date of loss was \$7,135.00.

(f) Cuban Telephone Company Bonds

The evidence establishes that the Cuban Telephone Company was an American entity. Pursuant to Section 505(a) of the Act, debts due from American concerns may not be allowed unless they constituted charges upon property taken by Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) According to the affidavit of claimant's Treasurer, dated October 15, 1969, the debt owed to claimant by the Cuban Telephone Company in the amount of \$500,000.00 was "not secured by any lien". The portion of the claim based upon these bonds is, therefore, denied.

(g) Cuban Electric Company First Mortgage Bonds

The Commission finds on the basis of the evidence of record that on the date of loss, October 24, 1960, the Cuban Electric Company was indebted to claimant in the aggregate amount of \$508,472.22, representing \$500,000.00 in

principal, and interest in the amount of \$8,472.22. Claimant sustained a loss in that aggregate amount within the meaning of Title V of the Act, inasmuch as these bonds were secured by a mortgage on real property nationalized by the Government of Cuba. (See Claim of Frederick Snare Corporation, et al., Claim No. CU-2035.)

(h) Financiera Nacional de Cuba

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders of this entity. The Commission held that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its assets were assumed by Cuba, and that a claim for the loss of a debt of the Government of Cuba arose under Title V of the Act on August 17, 1960, the date of liquidation. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.) The Commission finds that the unpaid debt of Cuba to claimant on August 17, 1960 on account of claimant's interests in Financiera Nacional de Cuba (625 shares) was \$62,500.00, representing the face amount of these securities.

Mortgages

Based upon affidavits from claimant's Secretary, supported by certified extracts from claimant's books and records, the Commission finds that claimant was owed debts from various Cuban nationals in the principal amount of \$5,404,656.44. These debts were secured by mortgages on property in Cuba.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Article 30 of this law provided for the cancellation of all mortgages on property in Cuba. The Commission, therefore, finds that claimant's mortgages were cancelled on October 14, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act. (See Claim of Estate of Marita Dearing de Lattre, Claim No. CU-0116.) The Commission further finds that the value of claimant's mortgages on October 14, 1960, the date of loss, was \$5,471,399.16, representing \$5,404,656.44 in principal and interest in the amount of \$66,742.72.

Policy Loans

Claimant has asserted a loss in the amount of \$1,737,882.50, representing a number of loans made to Cubans secured by the cash surrender value of policies issued by claimant's branch office in Cuba. Inasmuch as these loans were secured by funds in the hands of claimant, the Commission suggested the submission of evidence establishing that this portion of the claim is based upon a nationalization, expropriation, intervention or other taking of claimant's property by Cuba within the purview of Title V of the Act, and for which asserted loss claimant had not already been compensated from the collateral funds in its possession. Claimant's response, in effect, was: that it had set aside in the form of reserves an amount equivalent to the cash surrender values of the policies and had deducted such amount in computing its claim; that the assets corresponding to the reserves had been invested by claimant in property that was taken by Cuba; and that consequently if the Commission disregarded the receivables due from claimant's insureds, it should also disregard an equivalent amount of reserves to reduce the deduction already taken by claimant.

The Commission has held consistently that with respect to a Cuban branch, as opposed to a subsidiary organized as a Cuban entity, a corporate claimant's loss should not be reduced by any of the branch liabilities, except for items properly the subject of set-off, such as taxes owing to the Government of Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the parent American corporation is or may be liable for the debts contracted by its Cuban branch.

As noted above, claimant has amended its claim by failing to deduct the reserves, and has thereby increased its claim proportionately. Moreover, the liabilities of the Cuban branch, including the said reserves, are not being deducted by the Commission in determining the amount of losses claimant sustained, except for taxes due the Government of Cuba. For these reasons, the Commission finds that the portion of the claim based upon policy loans does not involve a loss of property within the meaning of Title V of the Act. Accordingly, this portion of the claim is denied. (See Claim of Occidental Life Insurance Company of North Carolina, Claim No. CU-2353.)

Due and Deferred Premiums

This portion of the claim in the amount of \$143,495.29 is based upon uncollected insurance premiums due at the beginning of each policy year, for which claimant maintained an appropriate reserve, as in the case of the policy loans. For the reasons stated in connection with the claim for the policy loans, mutatis mutandis, this portion of the claim is also denied.

Accrued Interest

Claimant asserts a loss in the amount of \$116,898.57 for interest due on its bonds and mortgages subsequent to the respective dates of loss. As noted above, the Commission is allowing interest on the bonds and mortgages which fell due prior to said dates. In addition, the Commission is allowing interest on the aggregate losses from the respective dates of loss to the date of settlement, as set forth below. Accordingly, this portion of the claim is denied.

Agents' Balances and Other Receivables,  
Furniture and Fixtures, Petty Cash

Based upon affidavits from claimant's officers, supported by certified extracts from its books and records, the Commission finds that on October 24, 1960, the date of loss, claimant was owed \$10,251.98 by its Cuban agents, and \$9,279.79 by other Cubans; that the value of claimant's depreciated furniture and fixtures in Cuba was \$8,571.60, and that its petty cash was \$150.00.

Bank Accounts

Based upon affidavits from claimant's officers, supported by copies of extracts from its books and records and by bank statements, the Commission finds that claimant owned bank accounts in Cuba with a value of \$467,436.63, including deposits not entered by the banks. It appears, however, that as of October 24, 1960, the date of loss, claimant had \$360,187.83 of outstanding checks. Accordingly, the Commission finds that the value of claimant's bank accounts on October 24, 1960 was \$107,248.80.

Going Concern Value

Claimant states that the fair value of its insurance business was \$1,117,379.00. In computing this amount, claimant assumed that its "ordinary life insurance" business was worth \$40.00 per one thousand dollars of insurance written, \$20.00 per one thousand for group policies, approximately four times the premium in force for death and disability policies, and approximately 4% of the reserves for annuity, supplementary and other deposit contracts. In effect, claimant is asserting the loss of an asset in the nature of "good will" or "going concern" value.

The record includes copies of the adjusted trial balance, general balance, profit and loss statement, and supporting schedules for claimant's Cuban branch as of December 31, 1959. It appears that the Cuban branch earned \$152,348.18 in 1959. The balance sheet for the Cuban branch discloses that the Home Office (claimant) had overdrawn its account to the extent of \$196,665.61, which was reduced to \$44,317.43 by virtue of the earnings for 1959. However, it does not show the earnings for the Cuban branch for any other year.

In making determinations under Title V of the Act, the Commission might find it reasonable to include an amount for good will, or to determine the going concern value of an enterprise as a multiple of net earnings, if such net earnings were demonstrated over a period of years, and if other factors did not militate against such a method. (See Claim of General Dynamics Corporation, Claim No. CU-2476.) In the instant case with only one year's earnings furnished, such a method cannot, however, be applied.

Upon consideration of the entire record, the Commission finds that claimant has failed to establish that its insurance business in Cuba had a

value over and above the value of its assets in Cuba. Accordingly, this portion of the claim is denied.

Payments on Policies After Nationalization;  
Attorney Fees and Court Costs in Connection Therewith

The aggregate amount claimed for this portion of the claim is \$270,119.07, representing \$161,404.22 for payments made to its branch's insureds, \$80,533.13 for interest thereon, and \$28,181.72 for attorney fees and court costs.

Initially, claimant had contended that the nationalization of its assets in Cuba, including the reserves maintained in Cuba to assure its performance in accordance with the policies, relieved claimant of any obligations pursuant to such policies. After the courts held claimant responsible under said policies, claimant made payments to the insureds in question plus interest and court costs, and incurred further expenses for attorney fees. (Blanco v. Pan-Amer. Life Ins. Co., Concil v. Pan-Amer. Life Ins. Co., Diego v. Amer. Nat'l. Ins. Co., and Zabaleta v. Pan-Amer. Life Ins. Co., 221 F. Supp. 219 (S.D. Fla. 1963).) The original claim included such amounts as of March 1967, which were subsequently increased to \$270,119.07 on the basis of further payments through September 1967.

The Commission has informed claimant of its holding that claims for attorney fees in connection with litigation contesting the taking of property by Cuba did not constitute claims encompassed by Title V of the Act. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469.) For this reason, claimant withdrew portions of its claim based upon its Home Office share of expenses incurred after nationalization by Cuba in the amount of \$130,000.00, and based upon attorney fees and court costs in the amount of \$56,967.32.

As in the case of policy loans and the due and deferred premiums, this portion of the claim is based upon the theory that claimant's reserves for such policies were taken by Cuba, which reserves had been applied to reduce

the claim. The Commission, however, is not reducing this claim on account of any of the branch's liabilities or reserves, except for taxes owing to Cuba, as will be noted below. Moreover, the Commission finds no basis for distinguishing the attorney fees herein from those which were the basis for the Commission's holding in the Squibb decision, supra, or from those which claimant has withdrawn in this matter. The claim for court costs can have no better status than the related claim for attorney fees. Accordingly, the portion of the claim based upon the payments to policyholders after nationalization, and court costs and legal fees in connection therewith in the amount of \$270,119.07 is denied.

Claimant's losses in Cuba may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
4-1/2% Bonds, 1937-1977	October 24, 1960	\$ 14,200.34
4% Bonds, 1953-1983	October 24, 1960	1,457,000.00
4% Bonds, 1950-1980	October 24, 1960	182,280.00
2-1/2% U. S. Treasury Bonds	October 24, 1960	7,135.00
Cuban Electric Company Mortgage Bonds	October 24, 1960	508,472.22
Financiera Nacional de Cuba	August 17, 1960	62,500.00
Mortgages	October 14, 1960	5,471,399.16
Bank Accounts	October 24, 1960	107,248.80
Agents' Balances	October 24, 1960	10,251.98
Receivables	October 24, 1960	9,279.79
Furniture and Fixtures	October 24, 1960	8,571.60
Petty Cash	October 24, 1960	<u>150.00</u>
Total		<u>\$7,838,488.89</u>



The balance sheet shows that as of December 31, 1959, claimant's Cuban branch was indebted to Cuba in the amounts of \$10,790.79 and \$6,059.55, or the aggregate of \$16,850.34, on account of taxes. In the absence of evidence establishing that these taxes were paid, the Commission concludes that they should be deducted in computing claimant's losses under Title V of the Act. (See Claim of Simmons Company, supra.)

Accordingly, the Commission finds that claimant's losses aggregated \$7,821,638.55. It is concluded that the said taxes should be deducted from the losses that occurred on October 24, 1960, and not from those that occurred on August 17, 1960 and October 14, 1960.

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 respective dates 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 as follows:

<u>FROM</u>	<u>ON</u>
August 17, 1960	\$ 62,500.00
October 14, 1960	5,471,399.16
October 24, 1960	<u>2,287,739.39</u>
Total	<u>\$7,821,638.55</u>

CERTIFICATION OF LOSS

The Commission certifies that PAN-AMERICAN LIFE INSURANCE COMPANY 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 Seven Million Eight Hundred Twenty-one Thousand Six Hundred Thirty-eight Dollars and Fifty-five Cents (\$7,821,638.55) 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

NOV 26 1969

*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).)

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