

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

IN THE MATTER OF THE CLAIM OF

MERCANTILE TRUST COMPANY, JAMES E.  
NEWELL AND JAMES NEWELL R. MCKAY AS  
TRUSTEES U/W OF FLORENCE M. MCKAY,  
DECEASED

Claim No. CU -5106

Decision No. CU

1828

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$50,000.00 was presented by MERCANTILE TRUST COMPANY, JAMES E. NEWELL AND JAMES NEWELL R. MCKAY AS TRUSTEES U/W OF FLORENCE M. MCKAY, DECEASED, and is based on an interest in bonds issued by the Consolidated Railroads of Cuba. The record discloses that the claimants received the bonds on April 1, 1953 as Trustees of a trust created under the will of Florence M. McKay, deceased. Florence M. McKay, a national of the United States, died on June 9, 1952. The beneficiary of the trust, JAMES NEWELL R. MCKAY, has been a national of the United States since his birth.

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 evidence of record, the Commission finds that JAMES NEWELL R. MCKAY is, and since prior to October 13, 1960, has been the beneficial owner of ten bonds in the original face amount of 5,000.00 pesos each, issued by the Consolidated Railroads of Cuba and 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 bonds in question are Nos. RV 5493 to RV 5502, inclusive.

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 record shows that Consolidated Railroads of Cuba was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. The bonds subject of this claim therefore represented a debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of nationalization of the properties of the Consolidated Railroads of Cuba, JAMES NEWELL R. MCKAY,

as beneficial owner, suffered a loss in connection with the bonds within the meaning of Title V of the Act. (See the Claim of Edward R. Smith, FCSC Claim No. CU-5001.)

Information available to the Commission establishes that the last payment of interest on the subject debentures was made on April 1, 1959; however, the nationalized enterprise owed, as of that date, a total of 14.3% of the face amount of the debentures issued for prior accumulation of unpaid interest. The loss sustained was, therefore, the face amount of the bonds, the 14.3% prior accumulation of interest, and interest at 3% per annum from April 1, 1959 to October 13, 1960, the date upon which the enterprise was nationalized by the Government of Cuba.

As to the dollar value of the bonds and interest, 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 the unpaid indebtedness on the bonds on October 13, 1960, the date of loss, was \$59,454.10, including the principal amount of \$50,000.00, and the interest due, to and including October 13, 1960, in the amount of \$9,454.10.

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 date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained 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 provision is made for settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amount asserted. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that MERCANTILE TRUST COMPANY, JAMES E. NEWELL AND JAMES NEWELL R. MCKAY AS TRUSTEES U/W OF FLORENCE M. MCKAY, DECEASED, suffered a loss, on behalf of JAMES NEWELL R. MCKAY, 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 Fifty-Nine Thousand Four Hundred Fifty-Four Dollars and Ten Cents (\$59,454.10) 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

8 MAY 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed bonds 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).)