

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

IN THE MATTER OF THE CLAIM OF

EDNA M. LEASENFELD AND
ISRAEL TILDEN, TRUSTEES
UNDER THE WILL OF CARL A.
LEASENFELD, DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0968

Decision No. CU 2076

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 EDNA M. LEASENFELD AND ISRAEL TILDEN, TRUSTEES UNDER THE WILL OF CARL A. LEASENFELD, DECEASED, based upon the loss of interests in bonds issued by the Cuba Railroad Company and Cuba Northern Railways Company. The decedent, Carl A. Leasenfeld, was a national of the United States since his birth. The record discloses that all of the beneficiaries of a trust created by his Last Will and Testament have been nationals of the United States since 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 the evidence of record, the Commission finds that the late Carl A. Leasenfeld was, and since prior to October 13, 1960, had been the owner of three bonds in the original face amount of \$1,000.00, issued by the Cuba Railroad Company and known as First Mortgage Gold Bond, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. TRM 3654, TRM 3655 and TRM 3656.

Pursuant to the Supplemental Indenture of July 1, 1952, each bond is over stamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

The Commission further finds that the late Carl A. Leasenfeld was, and since prior to October 13, 1960, had been the owner of four bonds, in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company, and known as First Lien and Refunding Bonds, Series B, 4%, due June 30, 1970 issued under Supplemental Indentures of June 2, 1926 and July 1, 1952, with the First National City Bank of New York as Successor Trustee. The bonds in question are numbered TMR 193 through TRM 196, inclusive.

The Cuba Railroad Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By Supplemental Indenture of July 1, 1952, the bonds were re-issued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance.

Additionally, and on the basis of evidence of record, the Commission finds that the late Carl A. Leasenfeld was, and since prior to October 13, 1960, had been the owner of ten bonds in the original face amount of \$1,000.00 each, issued by the Cuba Northern Railways Company and known as First Mortgage Gold Bonds, 4%, due June 30, 1970 (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee. The bonds in question are Nos. TRM 1353 through TRM 1362, inclusive.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain Transitory Provisions which extended the maturity date on mortgage indebtedness in excess of \$800,000.00 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a Plan for Readjustment of Bonded Debt of the Cuba Northern Railways Company, stockholders surrendered their 5-1/2% Gold Bonds and received, in exchange, First Mortgage Gold Bonds, 4%, due June 30, 1970. The interest on these bonds was payable on June 1 and December 1 of each year.

The record discloses that the last payment of interest on the Cuba Railroad Company First Mortgage Gold Bonds was made on January 1, 1959; that the last payment of interest on the Cuba Railroad Company First Lien and Refunding Bonds was made on December 1, 1958; and that the last payment of interest on the Cuba Northern Railways Company First Mortgage Gold Bonds was made on December 1, 1958.

The record further discloses that the Cuba Railroad Company and Cuba Northern Railways Company were nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. Consolidated Railroads of Cuba also

owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. Thus, neither Cuba Railroad Company nor Cuba Northern Railways Company would qualify as corporate nationals of the United States under Section 502(1)(B) of the Act which 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 Commission concludes that as a result of the nationalization of the properties of the Cuba Railroad Company and the Cuba Northern Railways Company, decedent suffered a loss in connection with his bonds, within the meaning of Title V of the Act. Claimants, appointed as Trustees on January 11, 1963, are therefore entitled to file a claim based upon bonds of the Cuba Railroad Company, and upon bonds of the Cuba Northern Railways Company, which represent debts of nationalized Cuban enterprises, within the purview of Section 502(3) of the Act. (See Claim of Joseph Gans, Claim No. CU-1720; Claim of Albert I. Harris and Elizabeth Harris, Claim No. CU-2398; and Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

The Commission finds that the total amount of unpaid indebtedness on the Cuba Railroad Company First Mortgage Gold Bonds was \$1,478.58, including the principal amounts of \$460.00 on each bond, and the interest due on each bond from January 1, 1959 through October 13, 1960, in the amount of \$32.86; that the total amount of unpaid indebtedness on the Cuba Railroad Company First Lien and Refunding Bonds was \$2,730.24, including the principal amounts of \$635.00 on each bond, and the interest due on each bond from December 1, 1958 through October 13, 1960, in the amount of \$47.56; and that the total amount of unpaid indebtedness on the Cuba Northern Railways Company First Mortgage Gold Bonds was \$6,825.60, including the principal amounts of \$635.00 on each bond, and the interest due on each bond from

December 1, 1958 through October 13, 1960, in the amount of \$47.56. Thus, the total loss on all bonds, including principal and accrued interest during the periods indicated, was \$11,034.42.

Under the terms of the Last Will and Testament of the late Carl A. Leasenfeld, decedent's widow, Edna M. Leasenfeld, acquired a beneficial interest in subject bonds amounting to a life estate, with a remainder interest to the following beneficiaries, to wit: a $\frac{3}{6}$ interest to Charles J. Leasenfeld; a $\frac{2}{6}$ interest to George Leasenfeld; and a $\frac{1}{6}$ interest to Carl A. Leasenfeld, II.

According to evidence of record, Edna M. Leasenfeld was 73 years old at the time of taking. The value of her life estate and of the remainder interest must therefore be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a $3\frac{1}{2}\%$ interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate in property so encumbered is valued at .23934 of the entire estate, and the remainder interest is valued at .76066.

Therefore, since the value of the property in question is \$11,034.42, the life estate is valued at \$2,640.98 which is .23934 of that amount and the remainder is valued at \$8,393.44, which is .76066 of that amount. Accordingly, the interest of Edna M. Leasenfeld is valued at \$2,640.98, the interest of Charles J. Leasenfeld is valued at \$4,196.72, the interest of George M. Leasenfeld is valued at \$2,797.82 and the interest of Carl A. Leasenfeld, II, is valued at \$1,398.90.

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 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 EDNA M. LEASENFELD AND ISRAEL TILDEN, TRUSTEES UNDER THE WILL OF CARL A. LEASENFELD, DECEASED, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, in the total amount of Eleven Thousand Thirty-Four Dollars and Forty-Two Cents (\$11,034.42), for the sole use and benefit of EDNA M. LEASENFELD as to Two Thousand Six Hundred Forty Dollars and Ninety-Eight Cents (\$2,640.98); of Charles J. Leasenfeld as to Four Thousand One Hundred Ninety-Six Dollars and Seventy-One Cents (\$4,196.71); of George M. Leasenfeld as to Two Thousand Seven Hundred Ninety-Seven Dollars and Eighty-Two Cents (\$2,797.82); and of Carl A. Leasenfeld, II, as to One Thousand Three Hundred Ninety-Eight Dollars and Ninety-One Cents (\$1,398.91) with interest thereon at 6% per annum from October 13, 1960, the date of loss, to the date of settlement.

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

24 JUL 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

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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 TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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