

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

IN THE MATTER OF THE CLAIM OF

MILTON W. KING
and
ROBERT B. FRANK

Claim No. CU-1010

Decision No. CU -1711

Under the International Claims Settlement
Act of 1949, as amended

SECOND AMENDED PROPOSED DECISION

By Proposed Decision dated April 24, 1968, the Commission certified that LOUISE B. KING suffered a loss in the amount of Eighteen Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents (\$18,579.80) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement based on her ownership interests in bonds issued by the Cuba Railroad Company and the Cuba Northern Railways Company both of which companies were nationalized by the Government of Cuba on October 13, 1960.

Thereafter, evidence was submitted to the Commission to establish that the claimant, LOUISE B. KING, died on April 24, 1967, subsequent to filing this claim with the Commission and that MILTON W. KING and ROBERT B. FRANK were appointed as the Executors of her estate. Upon consideration of this matter, the Commission issued its Amended Proposed Decision on July 3, 1968 restating the award in favor of MILTON W. KING and ROBERT B. FRANK, Executors of the Estate of Louise B. King, Deceased.

The Executors of the Estate of Louise B. King, Deceased, MILTON W. KING and ROBERT B. FRANK, having submitted a certified copy of an Order of the United States District Court for the District of Columbia, of July 12, 1968, authorizing the Executors to distribute to themselves, individually, the bonds of the Cuba Railroad Company and the Cuba Northern Railways Company formerly owned by Louise B. King, Deceased and further

authorizing said Executors to distribute to themselves as individuals, equally any claim or settlement resulting from the ownership thereof, and the Commission having considered this matter, it is

ORDERED that the Amended Proposed Decision be and it is hereby amended as follows:

On the basis of the evidence of record the Commission finds that MILTON W. KING and ROBERT B. FRANK, individually, are entitled to share in equal parts, the claim which arose on October 13, 1960, by action of the Government of Cuba, in favor of Louise B. King, now deceased, and accordingly they are substituted as claimants in this matter, in place of their status as Executors, in so far as this claim is concerned.

Accordingly, the certification of loss as restated below, will be entered and in all other respects the Proposed Decision and Amended Proposed Decision are affirmed.

CERTIFICATION OF LOSS

The Commission certifies that MILTON W. KING succeeded to and 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 Thousand Two Hundred Eighty-Nine Dollars and Ninety Cents (\$9,289.90) with interest thereon at 6% per annum from October 13, 1960, to the date of settlement; and

the Commission certifies that ROBERT B. FRANK succeeded to and 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 Thousand Two Hundred Eighty-Nine Dollars and Ninety Cents (\$9,289.90) 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 Second Amended
Proposed Decision of the Commission

JUL 31 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Treidberg
Sidney Treidberg, Commissioner

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 claimants establish retention of the securities or the loss here certified.

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 Second Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

LOUISE B. KING

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1010

Decision No. CU **1711**

Counsel for claimant:

King & Nordlinger
By Robert B. Frank, Esq.

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 LOUISE B. KING based upon the loss of interests in bonds issued by the Cuba Railroad Company and the Cuba Northern Railways Company. Claimant has been a national of the United States since her birth in the United States.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (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 ten bonds in the original face amount of \$1,000.00 each, 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 3746 through and including TRM 3755.

Pursuant to the Supplemental Indenture of July 1, 1952, the bonds are overstamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principle balance.

The Commission further finds that claimant is, and since prior to October 13, 1960, has been the owner of twenty 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 6209 through TRM 6228, 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 Company", bondholders of the Cuba Northern Railway Company 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 last payment of interest on these bonds was made on December 1, 1958.

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. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) 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."

Consolidated Railroads of Cuba also owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. The latter in turn owned the majority interest in Guantanamo and Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. Thus, none of these railroads qualify as a national of the United States under Section 502(1) of the Act.

The record shows that the properties of Cuba Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represent a debt which was a charge on property which has been nationalized by the Government of Cuba as defined in Section 502(3) of the Act (supra).

The record further shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represented the debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Railroad Company and the Cuba Northern Railways Company, claimant suffered a loss on October 13, 1960 in connection with her bonds, within the meaning of Title V of the Act. (See Claim of Joseph Gans, Claim No. CU-1720 and Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

With regard to the value of the bonds of the Cuba Railroad Company on the date of loss, information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on these bonds on October 13, 1960, the date of loss, was \$4,928.60, including the principal amount of \$460.00, on each of the bonds, and the interest due thereon in the amount of \$32.86 each.

Evidence of record establishes that each of the Cuba Northern Railways Bonds had an outstanding principal balance of \$635.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on claimant's bonds of the Cuba Northern Railways on October 13, 1960, the date of loss, was \$13,651.20, including the principal amount of \$635.00 on each of the twenty bonds, and the interest due on each of them in the amount of \$47.56 for the period December 1, 1958 to October 13, 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 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 LOUISE B. KING 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 Eighteen Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents (\$18,579.80) 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

APR 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)

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