

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

IN THE MATTER OF THE CLAIM OF

THE FIRST NATIONAL BANK OF BOSTON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2268

Decision No. CU -3071

Counsel for claimant:

Bingham, Dana & Gould
by Walter D. Malcolm, Esq.
Robert Haydock, Jr., Esq.
and
Everett H. Parker, Esq.

AMENDED FINAL DECISION

On February 26, 1969, the Commission issued its Final Decision in this matter, certifying that THE FIRST NATIONAL BANK OF BOSTON suffered a loss in the amount of \$5,603,050.88, with interest at 6% per annum on \$5,597,050.88 from September 17, 1960, and on \$6,000.00 from October 13, 1960, to the date of settlement.

A portion of the claim which was denied was that based on a loan by the Head Office of the claimant to the Cuban Telephone Co. The denial was based on the fact that Cutelco qualified as a United States national, and the debt was not secured by property taken by the Government of Cuba, which might otherwise have permitted certification of loss under the second sentence of Section 505(a) of the Act.

The Commission has since held that a claim based upon debts of Cutelco is within the purview of Title V of the Act because, although the Cutelco was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone & Telegraph Corporation, Claim No. CU-2615, Decision No. CU-5013.) In that claim the Commission found that the assets of Cutelco had been taken by the Government of Cuba on August 6, 1960.

The record includes participation and loan agreements showing that the amount of the indebtedness of Cutelco to claimant was \$301,890.00 including the principal amount of \$290,000.00 plus interest of \$11,890.00. The Commission therefore finds that claimant sustained a loss in this amount, within the scope of Title V of the Act on August 6, 1960.

Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed and Final Decisions are affirmed.

CERTIFICATION OF LOSS

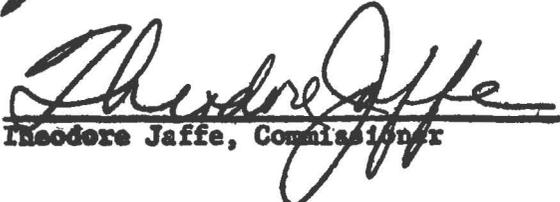
The Commission certifies that THE FIRST NATIONAL BANK OF BOSTON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Million Nine Hundred Four Thousand Nine Hundred Forty Dollars and Eighty-eight Cents (\$5,904,940.88), with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement,

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

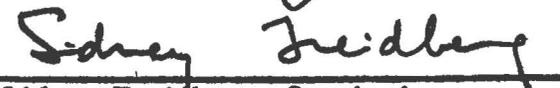
AUG 19 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



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.

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Appeal and objections from a Proposed Decision entered on September 11, 1968;
oral hearing requested.

Oral hearing held December 9, 1968.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$12,496,000.00, was presented by THE FIRST NATIONAL BANK OF BOSTON based upon asserted losses resulting from the nationalization of claimant's six branches in Cuba and upon the nonpayment of certain debts.

By Proposed Decision dated September 11, 1968 the Commission found that claimant qualified as a national of the United States, that its six branches in Cuba were nationalized by the Government of Cuba on September 17, 1960, and that the most appropriate measure of the value of the six branches at the time of loss was their book value of \$5,651,384.36, from which was deducted the sum of \$4,069,114.69 recovered by claimant subsequent to the nationalization, leaving a net loss for the six branches of \$1,582,269.67. The Commission further found that claimant had suffered an additional loss of \$1,666,845.57 within the meaning of Title V of the Act in connection with certain letters of credit issued by the Cuban branches prior to their nationalization; and certified that claimant had suffered a total loss in the amount of \$3,249,115.24. A portion of the claim based upon debts owed to claimant

by Cuban Telephone Company and Mid-Century Service, Inc. was denied on the ground that Section 505(a) of the Act precludes consideration of claims based upon debts owed by entities which qualify as United States nationals unless the debts were charges on property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant filed objections to the Proposed Decision, objecting specifically to the value placed upon its six Cuban branches, and to the denial of the portion of the claim based upon the debt owed by Cuban Telephone Company. A brief amicus curiae was filed by counsel for International Telephone and Telegraph Corporation (Claim No. CU-2615). At an oral hearing on December 9, 1968, the testimony of witnesses was presented and argument was made by counsel for claimant and amicus curiae. A subsequent brief amicus curiae was filed by counsel for Colgate-Palmolive Company (Claim No. CU-0730).

Value of Cuban branches at time of loss.

In its objections, claimant urges that its six branches be valued at \$12,200,000.00 at the time of loss, as going concerns. Pointing out that Section 503(a) of the Act requires the Commission to "take into account the basis of valuation most appropriate to the property and equitable to the claimant," it argued strongly for the adoption of either the "direct earnings method" or the "rate of return/net worth method" that it had suggested previously as routes to the going concern value of the six branches.

In the "direct earnings method," yearly earnings are multiplied by a multiple determined by various indices of performance (deposit growth, net worth increase, and return on investment equity). Claimant multiplied the 1959 earnings of its branches by 12.7 (obtained from the performance of 46 American banks), by 13.9 (from four American "growth" banks), and by 9.9 (from three Latin-American banks), and multiplied the average earnings for the five years of 1955 through 1959 by 12.7 (from the 46 American banks) and 15.9 (from the four "growth" banks). It then took the average of the five results, and arrived at \$12,603,096.00 for the value of the six Cuban branches.

In the "rate of return/net worth method," 1959 book value was multiplied by a multiple derived from analysis of the rate of return on invested equity in five groups of banks, and their market value as a percentage of net worth.

The Cuban branches earned a 20.6% return on equity in 1959, and a 24.5% return for the five years from 1955 through 1959, yielding, by comparison with other banks, multiples of 2.34 and 2.72, respectively, to be applied to 1959 book value. The results of these two averaged \$12,222,126.00.

The admitted weaknesses of the suggested methods are the difficulty in determining the proper multiple to be used, and the inability to make a comparison of claimant's Cuban branches with other Cuban banks due to the unavailability of data concerning such banks. In its Proposed Decision, the Commission resorted to book value, after stating that it was not convinced that the claimant's basis for evaluation, resting on a comparison of the six branches with a number of banks operating in the United States and three other non-Cuban banks, was valid.

In the course of the oral hearing, an expert witness, favoring the capitalization of earnings as a method of valuation, testified that in his opinion a lower multiple should be applied to earnings of the Cuban branches in order to determine their going concern value, than to the earnings of the claimant enterprise as a whole, in view of the inherent risk in conducting a business of this nature in a foreign country, subject to close governmental regulation, currency control, and possible fluctuation in the value of the foreign currency. Even offsetting this by the fact that claimant's Cuban branches yielded a greater return on investment than did claimant bank as a whole, he suggested a multiple of ten times earnings. This, if applied to the branches' 1959 earnings, would yield a going concern value of \$9,948,550.00, or \$9,336,810.00 if applied to the average annual earnings for the five-year period from 1955 through 1959. However, the witness admitted that his reduction of the multiple to ten represented a crude and arbitrary adjustment, and was entirely a matter of judgment.

As an alternative method of calculating the value of its Cuban branches, claimant suggested in its brief that the fair market value of the branches be determined from the fair market value of the whole enterprise on the basis of comparison of net income. Multiplying the average value per share of stock in the corporation for the year of 1959 by the total number of shares outstanding on December 31, 1959, claimant arrived at a market value for the whole enterprise

of \$249,200,000.00. The 1959 net income of the six branches was \$994,855.00 after Cuban taxes, representing 4.62% of the net income of claimant bank as a whole. Applying this percentage to \$249,200,000.00 yielded a value of \$11,513,040.00 for the branches. Recognizing that this calculation failed to reflect the effect of 1959 United States income taxes on the net income of the branches, claimant submitted a recalculation in an addendum to its brief, showing a net income of \$676,740.00 for the Cuban branches after Cuban and United States taxes. This represented 3.21% of the similarly adjusted net income of the whole enterprise, indicating a fair market value for the six branches of \$7,999,320.00.

The Commission has recognized, and indeed Section 503(a) of the Act makes abundantly clear, that book value is not always the most appropriate basis for valuation of nationalized property. Determinations of the Commission must be made on the basis of evidence available to it, however, and at times the available evidence permits only the use of book value. In the instant case, the nature of the business conducted is such that earnings potential reflected in the market price of the stock is of greater significance than asset value in the determination of true value of the enterprise at any given time. The Commission is persuaded that at the time of loss the claimant's six Cuban branches had a value exceeding their book value; and the quantity and quality of evidence submitted places the Commission in a position to determine that the "basis of valuation most appropriate to the property and equitable to the claimant" is that of allotting to the branches the portion of the fair market value of the whole enterprise which the net income of the branches bore to the net income of the whole. Accordingly, the Commission finds that the value of the six branches on September 17, 1960 was \$7,999,320.00 and that, after deduction of the recovered \$4,069,114.69, claimant suffered a loss in the amount of \$3,930,205.31 as a result of the nationalization of the six branches by the Government of Cuba.

In addition, the finding of loss of \$1,666,845.57 for payments in connection with letters of credit is affirmed.

DEBT OF CUBAN TELEPHONE COMPANY a/k/a CUTELCO

The pertinent history of this matter is that Cutelco was organized in the United States but all or nearly all of its assets were located in Cuba. By Cuban Government Resolution No. 1 published August 6, 1960, pursuant to Law No. 851, its assets were nationalized. At that time it owed claimant bank \$290,000. This amount was asserted to be compensable in this case but was disallowed by our Proposed Decision because, under Section 505(a) of the Act, it was held to be an unsecured debt of a United States national. The Commission previously determined the nationality issue based on information furnished the State Department in 1960 by the International Telephone and Telegraph Corporation. The United States interest was then found to be 60.75%, whereas anything over 50% would place Cutelco in the category of claimants covered by Section 505(a).

It is now asserted by a new affidavit that in fact Cutelco had slightly less than 50% American ownership on the date of the taking. We, however, find and hold that this evidence does not overcome that previously adduced and already ruled upon by our Commission. Also, Amicus Curiae urge that Cutelco was dormant or defunct after its properties were taken, but we fail to see how that could alter the statutory boundaries.

Also, the claimant urges that the Cuban Nationalization Decree should be interpreted as an assumption by the Cuban Government of the debts of Cutelco, including its debts to the claimant. It is not necessary for the Commission to determine whether the claimant's interpretation of the Cuban Decree is correct, for even if the Cuban Government specifically assumed the liability of Cutelco to the claimant, this would not support a certification in its favor.

The statutory function of the Commission is to determine the rights of persons whose property has been nationalized or otherwise taken. When the Cuban Government nationalized the property of Cutelco it did not

thereby nationalize any property of the First National Bank of Boston. Therefore, the bank can not prevail on this issue.

That does not mean, however, that the Bank is without a remedy. Cutelco, as a United States national, has a claim filed on its behalf with the Commission by one of its stockholders (viz. CU-3682) for the nationalization of its assets. The Bank can in fact protect itself by obtaining a judgment against Cutelco and levying on any assets it may then have, including any recovery on its claim against the Cuban Government. A federal court recently reached a similar conclusion as to insurance contracts in the case of Blanco v. Pan-American Life Insurance Company, et al., 221 F. Supp. 219.

Finally, we find no merit to the claimant's contention that the legislative history of the Act exempts banks from the operation of Section 505(a). This was considered previously by the Commission and rejected in the Proposed Decision wherein the Commission found that the language of the section itself is quite clear and contains no exception in favor of banks.

For the reasons set forth above, the denial of the portion of the claim based upon a debt owed to claimant by Cuban Telephone Company is affirmed.

Debt of Mid-Century Service, Inc.

In its Proposed Decision, the Commission denied a portion of the claim based upon a debt owed to claimant by Mid-Century Service, Inc., on the same grounds as applied to the indebtedness of Cuban Telephone Company. Although no objection was made to this portion of the Proposed Decision, upon re-examination of the record the Commission is moved to reconsider its holding in this respect.

It appears from the record that Mid-Century Service, Inc. was organized in 1950 under the laws of the State of New York, to operate principally as buying agent for Grabiél Sisto y Cia, S.A., a Cuban corporation which operated a large department store in Havana, and which was nationalized by the Government of Cuba on October 13, 1960 pursuant to Law No. 890. The Commission finds that claimant extended a loan to Mid-Century Service, Inc. in the amount of \$30,000.00 on September 11, 1959, that it was increased to \$40,000.00 on September 18, 1959, that subsequent payments reduced the balance due to \$6,000.00 after which Mid-Century Service, Inc. became insolvent, its only asset being an account receivable from Grabiél Sisto y Cia, S.A. The Commission further finds that by an instrument dated September 16, 1959, Grabiél Sisto y Cia, S.A. had guaranteed to claimant the fulfillment of all obligations of Mid-Century Service, Inc. to a maximum of \$50,000.00, waiving presentation, protest, and all demands and notices, and assenting to "the addition or release of any other person primarily or secondarily liable."

In view of this guaranty, the Commission finds that the unpaid balance of \$6,000.00, as the debt of a nationalized enterprise (Grabiél Sisto y Cia, S.A.), constituted "property" as defined in Section 502(3) of the Act, and that its loss as a result of the nationalization of Grabiél Sisto y Cia, S.A. on October 13, 1960 gives rise to a compensable claim under the Act.

Conclusion.

The Commission concludes that claimant suffered a total loss within the meaning of Title V of the Act in the amount of \$5,603,050.88.

CERTIFICATION OF LOSS

The Commission certifies that THE FIRST NATIONAL BANK OF BOSTON 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 Five Million Six Hundred Three Thousand Fifty Dollars and Eighty-eight Cents (\$5,603,050.88), with interest thereon at 6% per annum on \$5,597,050.88 from September 17, 1960 to the date of settlement, and on \$6,000.00 from October 13, 1960 to the date of settlement.

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

FEB 26 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.

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PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$12,496,000.00 was presented by THE FIRST NATIONAL BANK OF BOSTON based upon asserted losses resulting from the nationalization of claimant's six branches in Cuba and upon the non-payment of certain debts.

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.

An officer of the Bank has certified that claimant is a national banking association organized under the laws of the United States and that at all times between 1903 and April 27, 1967, more than 50 per centum of the outstanding capital stock of the claimant has been owned by United States nationals. An officer of claimant Bank states further that on December 1, 1967, 5,959,830 shares of stock were held by 21,098 shareholders who were residents of the United States and presumed to be nationals of the United States and 40,170 shares were held by 91 non-residents and presumed to be nationals of other countries. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record reflects that claimant Bank maintained six branches in Cuba, including three located in Havana, and one each in Sancti-Spiritus, Santiago de Cuba and Cienfuegos.

On September 17, 1960, the Government of Cuba published in its Official Gazette Resolution No. 2 (pursuant to Law 851 of July 6, 1960). Resolution No. 2 listed as nationalized the branches and agencies in Cuba of THE FIRST NATIONAL BANK OF BOSTON, substituting the Government of Cuba in

place of the Bank with respect to both the assets and liabilities thereof. Accordingly, the Commission finds that the property in Cuba of THE FIRST NATIONAL BANK OF BOSTON was nationalized on September 17, 1960 by the Government of Cuba, which also assumed the liabilities of the branches in Cuba of said Bank.

Claimant has asserted its loss in the amount of \$12,496,000.00 as follows:

\$12,200,000 incurred by reason of taking of the branches
296,000 losses incurred by Boston Office activities
unrelated to the branches

Claimant has stated its initial book loss as \$6,703,300.26, composed of three parts:

Net worth of 6 branches:		
Capital and Reserves	\$3,745,000.00	
Unremitted earnings:		
1959	1,196,690.32	
1960	700,705.38	
Reserve for loan losses	<u>8,988.66</u>	\$5,651,384.36
Letter of Credit payments by		
Boston Office:	1,697,386.40	
Havana branch credit		
\$768,631.97		
Other receipts: <u>172,838.53</u>	<u>941,470.50</u>	755,915.90
Loan to Cuban Telephone Co.		290,000.00
Balance of Loan to Mid-Century, Inc.		<u>6,000.00</u>
		\$6,703,300.26

In 1961, it is stated, the Bank received duplicate United States Treasury bonds with a face amount of \$3,000,000, to replace bonds seized by the Cuban Government. The bonds were entered on the Bank's books at \$2,966,250, the market value on date of reissuance. Net recoveries from 1961 through 1966 from various unspecified sources amounted to \$191,705.77. Thus the net book loss was reduced to \$3,545,344.49:

Initial book loss		\$6,703,300.26
Bonds -	\$2,966,250.00	
Recoveries -	<u>191,705.77</u>	<u>3,157,955.77</u>
		\$3,545,344.49

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of

valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider: i.e., fair market value, book value, going concern value, or cost of replacement.

In amplification of the initial asserted loss of the branches, claimant has submitted a Statement of Condition of the branches as of September 16, 1960, as follows:

<u>ASSETS</u>	
Cash and due from Banks	\$29,488,518.44
U.S. Government obligations	3,001,885.22
Other securities	16,626,675.00
Loans and Discounts	21,291,950.21
Customers' Liability for Acceptances	11,338.85
Furniture and Fixtures	654,140.70
Other assets including Accounts Receivable, interest receivable and prepaid expenses	437,315.91
	<u>\$71,511,824.33</u>
TOTAL ASSETS	
 <u>LIABILITIES</u>	
Capital	\$ 1,000,000.00
Reserve for Contingencies	2,745,000.00
Reserve for Loans	8,988.66
Unremitted Earnings - 1959	1,196,690.32
Unremitted Earnings - 1960	700,705.38
	<u>\$ 5,651,384.36</u>
Demand Deposits	\$44,281,678.24
Time Deposits	12,563,523.97
Deposits of Banks	527,938.74
Other Deposits	8,038,706.35
Acceptances Executed	11,338.85
Other Liabilities	437,253.82
	<u>65,860,439.97</u>
	<u>\$71,511,824.33</u>

In support of the above, claimant submitted certified statements of condition of the six branches, with a consolidated statement reflecting certain adjusting entries, as shown below:

<u>RESOURCES</u>		
Bills Discounted	\$1,698,213.04	
Time Loans	4,265,586.44	
Time Loans Secured	5,035,379.10	
Time Loans Matured Secured	2,974,947.20	
Demand and Short Term Loans	6,855,261.48	
Overdrafts in Current Accounts	5,284.83	
Advances against Merchandise	6,000.00	
Foreign Bills Purchased	172,224.00	
Past Due Obligations	1,160.43	
Customers' Liability Accept. a/c Matured	<u>277,893.69</u>	
Total Loans and Investments		\$21,291,950.21
Bonds and Securities owned (after debit adjustment of \$15,375.00)	\$16,463,375.00	
U.S. Government Bonds owned (after credit adjustment of \$3,739.78)	3,001,885.22	
Stock Banco Nacional de Cuba	163,300.00	
Due from Head Office	606,838.71	
Due from Foreign Banks	270,728.99	
Banco Nacional de Cuba Special Acct.	50,000.00	
Cash Tellers	710,456.24	
Cash Reserve in Vault	2,288,570.00	
Cash Reserve in Banco Nacional de Cuba	<u>23,406,269.91</u>	26,405,296.15
Cash Items Local	11,588.68	
Cash Items in Transit (after debit adjustment of \$461,780.47)	504,722.35	
Clearing Items	1,572,186.89	
Returned Checks Pending Liquidation	57,233.03	
Revenue and Postage Stamps	9,782.32	
Sight & Short Time Bills Purchased	11.97	
Postal Money Orders	<u>129.35</u>	2,355,654.59
Accounts Receivable	25,784.47	
Collection Dept. Revenue Stamps	<u>3,356.20</u>	29,140.67
Furniture and Fixtures (after credit adjustment of \$5,269.72)	135,685.83	
Repairs and Alterations (after credit adjustment of \$7,990.28)	<u>518,454.87</u>	654,140.70
Interest Receivable	393,948.80	
Commissions Receivable	751.96	
Foreign Exchange Income Receivable	2,289.53	
Service Charges Receivable	165.00	
Prepaid Insurance and Expenses	10,941.36	
Miscellaneous	<u>78.59</u>	
Total Other Assets		408,175.24
Customers' Liability a/c Acceptances		<u>11,338.85</u>
		<u>\$71,511,824.33</u>

LIABILITIES

Current Accounts	\$40,066,277.11	
Current Accounts Inactive	645,580.02	
Special Deposit Accounts	677,318.38	
U.S. Savings Deposits	<u>38,852.74</u>	\$41,429,028.25
Certified Checks	2,158,432.69	
Managers Checks	2,790,849.99	
Managers Checks - Exchange Dept.	2,659.17	
Branch Checks	258.15	
Inter-Bank Transfers	180,288.95	
Legal Deposits (Embargos, etc.)	68,066.18	
Drafts and Payments Advised Unpaid	931.31	
Suspense Accounts	212,795.32	
Collection Suspense Account	9,604.20	
Bco. Nac. de Cuba - Surcharge Law 566	27.00	
Coll. effected pending cover of exchange	2,534,630.47	
Government Taxes	27,526.82	
Anticipated Payments Letters of Credit	2,906,217.42	
Time Deposits Matured	352,914.72	
Savings Bonds Matured	10,500.00	
Time Deposits Matured & Frozen	<u>19,285.00</u>	11,274,987.37
Due to Foreign Banks - Their Accounts	1,855.86	
Due to Local Banks - Their Accounts	<u>526,082.88</u>	527,938.74
Savings Deposits	2,287,442.24	
Savings Deposits - Staff	85,935.04	
Savings Deposits - Inactive	<u>91,757.27</u>	2,465,134.55
Savings Bonds	113,500.00	
Time Deposits	<u>9,602,189.70</u>	9,715,689.70
Due to Foreign Banks our A/cs.O.D.		9,974.34
Other liabilities (after adjustments of record)		426,348.17
Acceptances by Bank		<u>11,338.85</u>
		\$65,860,439.17
Reserve for Loans	8,988.66	
Due to Head Office Reserve Contingencies	2,745,000.00	
Due to Head Office Capital Account	1,000,000.00	
Unremitted Earnings - 1959	1,085,880.29	
Unremitted Earnings - 1960	<u>491,305.59</u>	5,651,384.36
		\$71,511,824.33

Claimant submits that its claim is not based on book loss but on the loss of the branches as valuable going concerns and as integral parts of the Bank, while recognizing the difficulty of making a precise measurement of such value, but contending nevertheless that there can be no doubt the branches had a value far in excess of the book figures.

In support of its contention claimant asserts several methods are available to determine going concern valuation for a particular banking operation: The direct earnings method, reaching a valuation figure by multiplying the

yearly earnings of the bank by a multiple determined by various indices of bank performance; and the rate of return/net worth method, analyzing the relation between the bank's rate of return on its invested capital and the price of its stock in relation to its net worth.

It is said that both of these methods require a comparison between the bank being evaluated and a representative sampling of other banks and that the best approach would be to make comparisons with other Cuban banks. Claimant states, however, that information concerning stock in Cuban banks in the period under consideration was not available since no stock was publicly traded and it has therefore utilized the statistical relationship existing in the United States and other Latin and South American countries between bank stock prices and other operational data in reaching valuation figures. Claimant has concluded that the application of these two techniques gives a going concern value to the branches of \$12,200,000.00.

Claimant has submitted figures to reflect that the direct earnings of the Cuban branches averaged \$933,681 for the five-year period 1955 through 1959, and indicates that this amounts to a 24.5% return on the Cuban investment. To select an earnings multiple, claimant considers deposit growth, net worth increase and return on investment equity, and has submitted schedules comparing data in these areas as applied to certain United States banks. In each of the schedules set out by claimant, the results appear higher than for the United States banks with which comparison is made.

The appropriate earnings multiple, according to claimant, may be taken as the price/earnings ratio of the stock of the bank groups with which the Cuban branches are being compared. Claimant then finds that for the period 1956 through 1960, this is 12.7 for a composite of 46 United States banks; it is 15.9 for four so-called "growth" banks in the United States; and appears to be 9.9 for three Latin and South American banks. Claimant then proceeds to average these results, arriving at \$12,603,096 as the average value based on price-earnings ratios.

The last three banks appear to be the only ones in which a stock price has in fact been utilized in the computations of claimant.

Proceeding to the rate of return/net worth method of valuation, claimant points out that the greater the return on invested equity capital, that is, net worth, the higher the stock will generally sell in relation to net worth. Tabulations and graphs set out by claimant, based on the same comparison banks, result in value multiples of 234% and 272%, arriving at \$12,222,126 as the average computed value.

The Commission has considered all of the evidence and contentions of the claimant with respect to its asserted value of the six branches in Cuba. The Commission is not convinced, however, that the basis for evaluation, resting on a comparison of the six branches with a number of banks operating in the United States, and three other non-Cuban banks, affords a valid and equitable evaluation. Consequently, the Commission rejects the asserted valuation and finds, in the absence of other substantive evidence, that the book value is the most appropriate value.

The net worth of the banks, collectively, may be found in the excess of assets over the contractual liabilities, or by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, in this case the calculation of net worth is seen as follows:

Original Capital and Reserves	\$3,745,000.00
Unremitted Earnings, 1959	1,196,690.32
Unremitted Earnings, 1960	700,705.38
Additional Loan Loss Reserve	8,988.66
Net Worth	<u>\$5,651,384.36</u>

With regard to the loss of the six branch banks, the Commission concludes that claimant sustained a loss in the amount of \$5,651,384.36 within the meaning of Title V of the Act as a result of the nationalization of said branch banks by the Government of Cuba on September 17, 1960.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

The record reflects that the loss sustained has been partially offset by credits and recoveries. In 1960, the Head Office maintained a branch credit balance in the amount of \$768,631.97 and it obtained certain recoveries in the amount of \$172,838.53. In addition, in 1961, claimant received duplicate United States Treasury bonds with a face amount of \$3,000,000.00 to replace the bonds which were taken by the Government of Cuba at the time the branch banks were expropriated. The market value of the bonds on the date of reissuance was \$2,966,250.00. Claimant also obtained other recoveries during the years 1961-66 amounting to \$161,394.19. Accordingly, the total amount of the offset, \$4,069,114.69, must be deducted from the amount of the loss. The Commission therefore finds the net loss sustained for this portion of the claim as \$1,582,269.67.

The second portion of the claim is based upon the asserted loss of \$1,697,386.40 for payments made by the Head Office of claimant under irrevocable letters of credit issued by the Bank's branches in Cuba prior to their nationalization. The record contains copies of the 332 Letters of Credit totaling \$1,697,157.15, an affidavit of a Vice President of claimant concerning the procedure involved in Letters of Credit transactions and a schedule pertaining to the transactions. The branch banks of claimant, because of their nationalization on September 17, 1960 by the Government of Cuba, were unable to remit to the Head Office the monies set aside for the Letter of Credit transactions. The Commission concludes that with regard to this portion of the claim, claimant sustained a loss within the meaning of Title V of the Act on September 17, 1960.

The record reflects, however, that E.I. Du Pont de Nemours & Co., the parent company of Du Pont Inter-America Chemical Co., Inc., the consignee on several Letter of Credit transactions, remitted \$30,311.58 to claimant

as payment for the Letters of Credit obligation owed by Du Pont Inter-America Chemical Co., Inc.

Section 506 of the Act, supra, provides that monies received on account of the same loss must be deducted. Accordingly, the sum of \$30,311.58 is deducted from the total amount due claimant on the Letters of Credit. The Commission concludes, therefore, that claimant also sustained a loss in the amount of \$1,666,845.57 within the meaning of Title V of the Act, as a result of nationalization of its branches in Cuba on September 17, 1960.

The third and remaining portion of the claim is based upon two loans made by the Head Office of claimant Bank to the Cuban Telephone Company and Mid-Century Service, Inc. The record reflects that both of these companies were organized under the laws of the United States. In addition, the record discloses that Cuban Telephone Company is 60.7550 per cent owned by United States nationals and therefore qualifies as a United States corporation. Additionally, it appears that Mid-Century, Inc., was a small closely held New York corporation.

Claimant has submitted a copy of a letter dated May 27, 1958 from the Export-Import Bank to claimant which recites an agreement between the two parties whereby claimant agreed to participate in a \$17,500,000.00 loan to the Cuban Telephone Company to the extent of \$290,000.00. The record contains copies of seventeen Participation Agreements dated between June 23, 1958 and December 31, 1959, issued by the Export-Import Bank certifying the purchase of beneficial interests in the indebtedness owing by the Cuban Telephone Company, totaling \$290,000.00. A copy of the ledger sheet of claimant reflects that a balance of \$290,000.00 was owing claimant on December 19, 1960.

The Government of Cuba published Resolution No. 1 dated August 6, 1960 (pursuant to Law No. 851 of July 6, 1960), which listed as nationalized the Cuban Telephone Company. It therefore appears that the Cuban Telephone Company sustained the loss of its assets in Cuba, on August 6, 1960.

Claimant contends (1) that this \$290,000.00 is compensable as the debt of a nationalized enterprise under Section 502(3) of the Act; (2) that it is compensable under Section 505(a); and (3) that under the terms of Resolution 1, the Government of Cuba assumed the liabilities of the Cuban Telephone Company.

Inasmuch as the Cuban Telephone Company qualifies as a United States national, its listing in Resolution 1 had the effect of taking of its assets by the Cuban Government. The company remained liable for its debts under the terms of Resolution 1.

There remains for determination the question whether a bank may recover for the non-payment of a debt owed by an entity qualifying as a United States national under Title V of the Act, if the debt owed is not a charge on property which has been nationalized, expropriated, intervened or taken by the Government of Cuba.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant contends that Section 505(a) limits recognition of claims for debts owed by United States corporations which were nationalized, but further asserts that the legislative history of Section 505(a) makes it clear that this Section was not intended to apply to the claims of banks for debts arising out of loan activities.

The legislative history reflects the following with respect to Section 503(a):

The purpose of this provision is to make clear that the Foreign Claims Settlement Commission does not have jurisdiction to consider claims over American nationals arising out of debts or other obligations for merchandise sold or services rendered to any corporation, association, or other entity organized under the laws of the United States or of any State, District of Columbia, or the Commonwealth of Puerto Rico provided, however, that the debt or obligation is not a charge on property taken by the Government of Cuba. It is not intended to exclude claims of banks, insurance companies, financial institutions, or other corporations, associations, or legal entities based upon the taking of assets in Cuba including assets in the form of debts or other obligations. Nor is it the purpose to exclude claims of those whose accounts in Cuban banks were nationalized, expropriated, intervened, or otherwise taken by the Government of Cuba. (Senate Report No. 701, 89th Congress, 1st Session, at page 4.)

Section 503(a) of the Act provides for recognition of claims against the Government of Cuba by United States nationals (such as THE FIRST NATIONAL BANK OF BOSTON) for losses resulting from the taking of property (or rights or interests therein); and Section 502(3) clarifies that such property may include debts of nationalized enterprises. Where there is an unsecured debt and the debtor qualifies as a claimant against Cuba, such claimant, as the Cuban Telephone Co., is entitled to maintain its own claim before this Commission. Whether it recovered, it would be expected to meet its obligations, and, as a United States national, would be answerable in an action brought against it in the appropriate United States Court. Under Section 503(a) a claimant such as the FIRST NATIONAL BANK may maintain its claim before this Commission for a debt owed by a United States national, such as the Cuban Telephone Co., only if such a debt is a charge upon property which has been taken.

The cited portion of the legislative history confirms that legal entities may recover for the taking of their assets in Cuba, including debts, such as accounts receivable. Section 503(a) is quite clear and contains no exception in favor of banks, as contended. The legislative history was not intended to create any latent exceptions to the express language of the statute in this regard.

The other loan made by claimant was that to Mid-Century Service, Inc. The record reflects that Mid-Century Service, Inc. was the buying agent in the United States for Grabiell Sisto Y Cia. S.A. and that it

obtained a loan from claimant in the amount of \$40,000.00. Grabiél executed a Guaranty in the amount of \$50,000.00. The principal assets of Mid-Century Service, Inc. were the accounts receivable of Grabiél Sisto y Cia. S.A. and when Grabiél was nationalized by the Government of Cuba on October 13, 1960 (Law 890), Mid-Century was unable to make further payments to claimant. Claimant states it was unable to proceed against the Guaranty executed by Grabiél Sisto y Cia. S.A. because of its nationalization.

The record contains a copy of the bank's ledger sheet which reflects that a balance of \$6,000.00 on said loan as of November 15, 1961 was owing to claimant.

The Commission holds that claim may not be maintained under Title V of the Act for debts of \$290,000.00 and \$6,000.00, due from entities qualifying as United States nationals, as the debts owed were not charges on property which was nationalized, expropriated, intervened or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

Accordingly, those portions of the claim are denied.

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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$3,249,115.24 from September 17, 1960 to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE FIRST NATIONAL BANK OF BOSTON 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 Three Million Two Hundred Forty-Nine Thousand One Hundred Fifteen Dollars and Twenty-Four Cents (\$3,249,115.24) with interest thereon at 6% per annum from September 17, 1960 to the date of settlement.

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

SEP 11 1968

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).)