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

#54
Mat.

IN THE MATTER OF THE CLAIM OF

SAMUEL J. WIKLER AND
FRANCES H. WIKLER AS
EXECUTORS OF THE ESTATE
OF JULIUS S. WIKLER,
DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2571

Decision No. CU 2069

Counsel for claimants: Wikler, Gottlieb, Taylor & Stewart

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 SAMUEL K. WIKLER and FRANCES H. WIKLER as Executors of the Estate of Julius S. Wikler, Deceased, in the amount of $3,534.38, based upon the asserted ownership and loss of the decedent's interest in bonds and accrual certificates issued by the Consolidated Railroads of 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 owned 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 504 of the Act provides, as to ownership of claims, that

> (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

> (b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claim is presented for an interest in bonds and accrual certificates issued by the Consolidated Railroads of Cuba and purchased by Julius S. Wikler on October 31, 1960. Evidence of record establishes that the said Julius S. Wikler died, testate, in 1963, and that claimants were appointed Executors of his estate on August 2, 1963. The decedent, Julius S. Wikler, and the beneficial owners of this claim, Frances H. Wikler, Anne Ruth Mininberg and Joseph M. Wikler, acquired United States nationality by birth in the United States.

Claimants have submitted 19 bonds in the original face amount of 5,000 pesos each, issued by the Consolidated Railroads of Cuba, and of an issue 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. All of these bonds are registered in the name of "Carl Marks & Co., Inc." and are numbered as follows: RV 10056, RV 10062, RV 10068, RV 10069, RV 10096, RV 10209, RV 10248, RV 10249, RV 10259, RV 10266 through RV 10271, inclusive, and RV 14884 through RV 14887, inclusive. On the basis of evidence of record, the Commission finds that decedent acquired the above-numbered bonds by purchase on October 31, 1960 for a consideration of $3,443.75.

Claimants have also submitted 10 Accrual Certificates, each in the face amount of 2,900 pesos, issued by the Consolidated Railroads of Cuba, pursuant to a corporate Recapitalization Plan, effective February 11, 1953. The Accrual Certificates in question are Nos. NYB 267, NYB 269, NYB 954, and NYB 1042 through NYB 1048, inclusive. On the basis of evidence of record, the Commission finds that decedent acquired the above-numbered accrual certificates by purchase on October 31, 1960 for a consideration of $90.63.

The record further discloses that the Consolidated Railroads of Cuba was nationalized by Cuban Law 890 published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimants are entitled to file this claim based upon the debt of a nationalized enterprise, within the meaning of Title V of the Act. (See Claim of Meyer Lobsenz, Claim No. CU-1005.)

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. Since the loss occurred on October 13, 1960, and since the decedent did not acquire the subject bonds and accrual certificates until October 31, 1960, the Commission suggested that evidence be submitted concerning the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities from the date of loss to the date on which the decedent acquired them by purchase. Claimants have been unable to obtain information or evidence to establish this element. Other factors, however, are determinative of this aspect of the claim.

Evidence of record in other claims before the Commission, including information submitted by the United States Trust Company of New York (Trustee on the bonds and Transfer Agent on the Accrual Certificates) discloses that the bonds of the issue above described were almost entirely owned and traded by persons or firms having addresses in the United States. Of a total issue approximating $23,800,000, more than $20,000,000 has been held by persons or firms with United States addresses. The bonds originally issued were payable in pesos. The bonds submitted in evidence, however, are an exception, in that they contain a notation to the effect that election had been made to receive payment in United States dollars. Both the bonds and the accrual certificates claimed had been, for the most part, in the possession of an American stockbroker for an extended period of time prior to the date of loss, having been held by the broker for the accounts of other customers. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date of filing.

The purpose of the Cuban claims program is to ascertain the total losses sustained by nationals of the United States as a result of actions by the Government of Cuba. It is well settled law that the technical rules of evidence do not apply to proceedings before administrative agencies in the absence of a statutory requirement that such rules must be observed (Opp Cotton Mills vs. Administrator, 312 U. S. 126, 155; 61 S. Ct. 524, 537; 85 L. Ed. 624).

In the Soviet claims program, administered by the Commission under Title III of the International Claims Settlement Act of 1949, as amended, the Commission held that an inference may be drawn that bonds issued by the Russian Government, payable in United States dollars, were originally owned by nationals of the United States, and were continuously owned thereafter by nationals of the United States. (See Claim of Theodore Francis Green, Claim No. SOV-41084, 10 FCSC Semiann. Rep. 205 [Jan-June 1959].)

Accordingly, in the absence of evidence to the contrary, the Commission concludes that the securities claimed were owned by a national or nationals of the United States on the date of loss, October 13, 1960, and were continuously so owned from the date of loss until October 31, 1960, the date on which they were purchased by the decedent.

The corporate Recapitalization Plan of the Consolidated Railroads of Cuba, adopted by vote of the stockholders of that company on February 11, 1953, provided for the deposit of all shares of 6% Cumulative Preferred stock in the company. In exchange for each share of preferred stock so deposited, the stockholder received the following:

(a) A 3% Cumulative Income Debenture, due in the year 2001, in the face amount of one hundred (100) pesos; and,

(b) An accrual certificate, without specific maturity date, non-interest bearing, in the face amount of 29 pesos; and,

(c) Cash in the net amount of 5.91 pesos after deduction of Cuban taxes.

As of October 1, 1952, the company owed accrued and unpaid dividends on its 6% Cumulative Preferred stock, and the exchange described above was chosen as the method of recapitalization. The time within which to deposit the preferred shares was extended from time to time, the final date for submission being June 15, 1954. On that date, approximately 255,813 shares had been deposited out of a total of approximately 303,073 shares outstanding.

Under the terms of the corporate Recapitalization Plan and the accrual certificate, a new order of priority of payment was created as to the obligations and preferred stock of the company. First in priority were the debts and other obligations of the company, including bonds; second were the outstanding shares of preferred stock; third in order, and on par with each other, were the accrual certificates and the accrued and unpaid dividends on the outstanding preferred stock. The holders of common stock were last in order of priority.

Evidence of record, and other information available to the Commission disclose that the value of the real property, equipment and other assets of the Consolidated Railroads of Cuba exceeded its total obligation on debts, bonds, preferred stock, accrual certificates, and accrued and unpaid stock dividends.

The Commission finds that the decedent, upon his purchase of the bonds and accrual certificates, succeeded to the loss sustained by the assignor of the claimed securities. In addition, the Commission concludes that claimants succeeded to and suffered a loss, in the total amount of $3,534.38, as a result of the nationalization of the Consolidated Railroads of Cuba on October 13, 1960 (Section 507(b) of the Act, supra).

This leaves for determination the question of whether interest should be included on the amount to be certified in this claim.

The Commission has previously determined 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.)

That determination, however, concerned claims which had not been acquired by purchase subsequent to the date of loss. In the case under consideration, the decedent was an assignee by purchase who acquired his interest in the claim subsequent to the date of loss.

The Commission has not previously determined the question here raised, because the provisions of Section 507(b) of the Act have not been incorporated in prior statutes authorizing claims programs. The Commission notes that the prevailing opinion in international law is that interest should run from thedate the claim arose until the date of payment. Prior to his acquisition of the bonds and accrual certificates, however, the claimant had no claim. Moreover, study of the Act and its history discloses the clear intent of Congress to prevent speculation in claims against Cuba. Thus, to include interest, from the date of loss, in cases where the claim was purchased at a later date would serve only to defeat that purpose.

Upon review of the legislative history of the Act, and of the statute itself, the Commission holds that the amount to be certified herein shall be increased by interest thereon at the rate of 6% per annum from October 31, 1960, the date on which the decedent acquired this claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SAMUEL J. WIKLER and FRANCES H. WIKLER as Executors of the Estate of Julius S. Wikler, Deceased, 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 Three Thousand Five Hundred Thirty-Four Dollars and Thirty-Eight Cents ($3,534.38) with interest thereon at 6% per annum from October 31, 1960, the date of purchase to the date of settlement.

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

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

July 3, 1968

Theodore Jaffe

Theodore Jaffe, 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 claimant establishes 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 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).)