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

IN THE MATTER OF THE CLAIM OF

IRVING TRUST COMPANY

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-2805

Decision No. CU-2480

Counsel for claimant: Gould & Wilkie

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 IRVING TRUST COMPANY, as Trustee, for $3,633,352.56, on behalf of bondholders, based upon the failure of the Guantanamo & Western Railroad Company to meet its obligations with respect to certain bonds issued by that Company, and on its own behalf for expenses incurred and services rendered as trustee incidental to the bond issue.

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 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 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.

Officers of the claimant corporation have submitted evidence to establish that the claimant corporation was organized under the Laws of the State of New York, and that at all times between the date of loss and presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of the claimant bank has been owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record, including statements of corporate officials, disclose that on October 13, 1960, 99.75 per cent of the outstanding capital stock of the claimant corporation was owned by nationals of the United States; that on July 1, 1966, Charter New York Corporation acquired all outstanding shares of stock of the claimant, IRVING TRUST COMPANY; and that at or about the time of filing this claim, 95.85 per cent of the total number of shares of stock of the Charter New York Corporation was owned by persons who were nationals of the United States.

The claimant has stated that a portion of this claim was made on behalf of United States nationals holding Guantanamo & Western Railroad First

Mortgage Bonds, 4%, Series A, due June 30, 1970, issued under an Indenture of January 1, 1928 and Supplemental Indentures of January 1, 1952 and October 1, 1959 with the IRVING TRUST COMPANY as Successor Trustee.

The claimant has no ultimate beneficial interest as a holder of any of the bonds but has presented this portion of the claim to fulfill its duty to protect the interests of holders of the bonds, as the holder of legal title to the claims represented thereby and as trustee.

Although the claimant herein is the agency through which bondholders might, under other circumstances, have had their rights protected under the bonds issued by the Guantanamo & Western Railroad Company, it does not itself claim herein to have suffered a loss within the meaning of Title V of the Act which the Commission might certify to the claimant and to the Secretary of State. Accordingly, the Commission's disposition of this portion of the instant claim can only be a denial thereof.

Accordingly, this portion of the instant claim is denied. The Commission deems it unnecessary to make specific findings with respect to other elements of this portion of the claim.

However, claimant's timely filing of a claim will protect the rights of holders of the bonds here involved, to the extent that any such holders who have filed or who may file claims based upon such bonds will have their claims considered by the Commission as timely filed, provided filing is made not later than March 1, 1970, to permit orderly disposition thereof before the termination of the claims program on May 1, 1970; and certifications will be made thereon as appropriate. (See Claim of Morgan Guaranty Trust Company of New York, as Trustee, Claim No. CU-1594.)

This leaves for determination a portion of the claim, in the amended amount of $4,533.14, based upon services rendered and expenses incurred by claimant, as trustee, on behalf of Guantanamo & Western Railroad Company pursuant to an agreement under an Indenture by which certain bonds were issued by the Railroad Company.

The record establishes that claimant presented bills for its services and expenses to the Guantanamo & Western Railroad Company, in varying amounts from January 6, 1959 to July 13, 1960, totalling $4,533.14, and that these bills were never paid.

The record further discloses that the Guantanamo & Western Railroad Company was listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Although Guantanamo & Western Railroad Company was organized in the State of Maine, 90.19% of its outstanding capital stock was owned by Consolidated Railroads of Cuba, a Cuban corporation. Therefore, the Guantanamo & Western Railroad Company does not qualify as a corporate "National of the United States", defined under Section 502(1)(B) of the Act (supra). Thus claimant is entitled to file this claim based upon a debt of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]).

Accordingly, the Commission concludes that the unpaid bills in question constituted a debt of the nationalized Cuban enterprise and that claimant suffered a loss in the amount of $4,533.14, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, as a result of nationalization of the Guantanamo & Western Railroad Company on 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 IRVING TRUST COMPANY 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 Four Thousand Five Hundred Thirty-Three Dollars and Fourteen Cents ($4,533.14) 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

JUL 31 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).)