

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

*Cuban Govt
Bond*

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IN THE MATTER OF THE CLAIM OF

CLEMENS R. MAISE

Claim No. CU-3191

Decision No. CU 601

Under the International Claims Settlement
Act of 1949, as amended

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 CLEMENS R. MAISE, a national of the United States since his birth in the United States, in the amount of \$1,328.00, in connection with a bond known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977.

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 evidence of record, the Commission finds that claimant is, and since 1951 has been, the owner of a bond of the issue known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977, bearing No. M77401, in the principal amount of \$1,000.00, with 34 interest coupons attached, each in the amount of \$22.50, payable semiannually, the earliest maturing on December 31, 1960, and the latest on June 30, 1977. Such a bond, as a "debt owed by the Government of Cuba", clearly constitutes property within the meaning of the term as defined in Section 502(3) of the Act, quoted above.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (See Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p. 52), but other than continued failure to make payments under its obligation, has taken no positive action concerning the rights of bondholders. The question arises whether such nonpayment may be deemed a nationalization, expropriation, intervention, or other taking of, or special measures directed against the property of the bondholder within the meaning of Section 503(a) of the Act. An affirmative answer emerges from an examination of the legislative history of H.R. 12259 which, upon enactment, became Public Law 88-666, adding Title V to the International Claims Settlement Act of 1949, as amended.

In the original version of the bill, Section 503(2) read as follows:

(3) The term 'property' means any property, right, or interest, including any leasehold interest.

In considering the amendment which substituted the language appearing in the bill as enacted, and including "debts owed by the Government of Cuba", the following comment was made:

The language inserted will make all Cuban Government debts subject to adjudication, regardless of whether there was outright repudiation or mere failure to pay. (Hearings on H.R. 10327, H.R. 10536, H.R. 10720, H.R. 12259, and H.R. 12260 Before the Subcommittee of the House of Representatives on Inter-American Affairs of the Committee on Foreign Affairs, 88th Cong., 2d Sess., 52 (1964).

Further light is thrown upon the meaning of the term "taking" by the following statement of the House Committee on Foreign Affairs in its favorable report on H.R. 9336, a bill which, upon enactment, amended Public Law 88-666 by deleting language which would have included debts for merchandise furnished or services rendered, without regard to the date on which the merchandise was furnished or the services rendered:

In short, pre- and post-Castro creditor interests of American nationals based on "debts owed by the Government of Cuba . . ." are eligible for consideration by the Foreign Claims Settlement Commission under this title--- so long as the "taking" (i.e. refusal to pay) of such property interests arose for the first time after January 1, 1959. (H.R. Rep. No. 706, 89th Cong., 1st Sess., 3 (1965).

From the above, it is concluded that the failure of the Government of Cuba to make the obligated payment on December 31, 1960, even without express repudiation of the bonds, occurring, as it did, for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gives rise to a valid claim for the amount of the unpaid indebtedness as of that date.

The Commission finds that the amount of the unpaid indebtedness on claimant's bond on December 31, 1960, the date of loss, was \$1,022.50, including the principal amount of \$1,000.00 and the interest due on December 31, 1960 in the amount of \$22.50.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

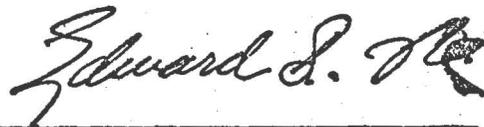
Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 31, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that CLEMENS R. MAISE suffered a loss, as a result of action 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 One Thousand Twenty-Two Dollars and Fifty Cents (\$1,022.50) with interest thereon at 6% per annum from December 31, 1960 to the date of settlement.

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

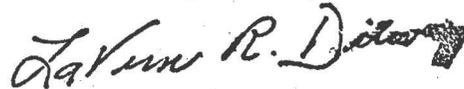
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)

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.