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

IN THE MATTER OF THE CLAIM OF

BILL LACEY

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU-4854

Decision No. CU-2641

Appeal and objections from a Proposed Decision entered August 14, 1968. No Hearing requested.

Hearing on the record held on June 30, 1971

FINAL DECISION

Under date of August 14, 1968, the Commission issued its Proposed Decision on this claim in which the Certification of Loss was limited pursuant to Section 507(b) of the Act. Since claimant's predecessor in interest had acquired the bond upon which the claim is based after December 31, 1960 (the date the claim arose), the Commission found that claimant sustained a loss in the principal amount of $26.00 representing the consideration actually paid by claimant's predecessor for the claim for the bond in question.

Claimant filed objections to the limitation applied by the Commission to the loss for the shares purchased after the date of loss contending that the Government of Cuba is thus released from its principal obligation.

The Commission, however, has consistently applied Section 507(b) of the Act to any claim under the statute acquired by purchase after the date the claim arose and prior to the date of filing with the Commission. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47, cited in the Proposed Decision on this claim.) Inasmuch as claimant's predecessor did not acquire his claim for the bond until April 18, 1963, over two years after the date on which the claim arose, the amount of his loss is limited by the statute to the price paid.

Upon consideration of the entire record, the Commission finds no basis for changing the decision on this claim previously entered and the Proposed Decision is therefore affirmed.

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

JUL 14 1971

Lyle S. Garlock, Chairman

Theodore Jaffe, Commissioner

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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, in the amount of $1,465.00 was presented by BILL LACEY based upon the asserted ownership of a bond known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977. Claimant has been a national of the United States since his birth in the United States.

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.

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.

On the basis of evidence of record, the Commission finds that Harold Aston Shryock, deceased, was since April 18, 1963 until his death on April 6, 1965, 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. M23889, 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.

The evidence of record establishes that Harold Aston Shryock purchased this bond on April 18, 1963 for $26.00, that he died testate on April 6, 1965, and that pursuant to the terms of the will of the deceased, BILL LACEY, the claimant herein, was the recipient of this bond.

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. This question has been affirmatively decided by the Commission. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68), which determined that the failure to 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.

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. The loss occurred on December 31, 1960. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securites were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his inheritance of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of $26.00, the price Harold Aston Shyock paid for the bonds.

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 date of loss to the date of settlement (See 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 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 BILL LACEY, 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 Twenty-Six Dollars ($26.00) 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

AUG 14 1968

Leonard v. B. Sutton

Leonard V. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

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.