

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

IN THE MATTER OF THE CLAIM OF

PENELOPE DAUPHINOT, Mother
and Natural Guardian of
CASSANDRA DAUPHINOT, a Minor

Claim No. CU-8432

Decision No. CU 6042

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

Claimant, PENELOPE DAUPHINOT, Mother and Natural Guardian of CASSANDRA DAUPHINOT, a Minor, asserts a claim for and on behalf of said CASSANDRA DAUPHINOT, under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of the Consolidated Railroads of Cuba. The claim is based on 3% Cumulative Income Debentures issued by the said Consolidated Railroads of Cuba.

In our decision entitled the Claim of Edward R. Smith (Claim No. CU-5001 which we incorporate herein by reference), we held that the properties of the Railroad were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$5,000.00 bond of \$5,945.41 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that CASSANDRA DAUPHINOT comes within the terms of the Smith decision and that she was an American national at the requisite times.

Title V of the Act provides for the Commission to receive and determine claims of nationals of the United States provided they are received within the period specified by the Commission, which period in fact commenced on November 1, 1965 and closed May 1, 1967. Under the Commission's Regulations

a notice of intention to file a claim received within 30 days prior to the expiration of the filing period may be considered a timely filing if formalized within 30 days after the expiration of the filing period.

In fact, however, the United States Trust Company of New York filed claim CU-2122 on behalf of the holders of 3% Income Debentures. The Commission determined that such timely filing protected the rights of the holders of such bonds, 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 in sufficient time to permit orderly disposition thereof before the termination of the claims program; and certifications will be made thereon as appropriate. (See Claim of Morgan Guaranty and Trust Company of New York, as Trustee, Claim No. CU-1594, 1967 FCSC Ann.Rep. 44.) The claims program must be completed by June 30, 1972, and such filings therefore should be made by May 1, 1972.

Accordingly, the claim filed on behalf of CASSANDRA DAUPHINOT is regarded as timely filed and is processed accordingly.

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.

On the basis of evidence of record, the Commission finds that claimant acquired 3% Income Debentures of the Consolidated Railroads, as follows:

<u>Face Value</u>	<u>Date of Purchase</u>	<u>Consideration Paid</u>
\$50,000.00	December 31, 1967	\$375.00

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. Here the loss occurred on October 13, 1960. In similar cases claimants have 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 up to the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type which are the 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 such claimed securities 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 such a presumption exists and that such securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

The Commission thus finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to a loss of \$375.00, the actual consideration paid for these bonds purchased on December 31, 1967 even though the claimant did not "own" them at the close of the period specified for filing claim under Title V of the Act. The reason the latter restriction does not apply to this situation is because a general claim for the loss had in fact been filed for all bondholders by the United States Trust Company during the statutory period, as above noted, and subsequent American holders are in effect the third party beneficiaries of that tolling of the statute. Accordingly the Commission holds that claimant suffered a loss of \$375.00 for the bonds purchased on December 31, 1967. (See also Claim No. CU-8739, Vivian Lopez Morales.)

The Commission has decided that in certifications of loss 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.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the date on which claimant acquired the claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PENELOPE DAUPHINOT, Mother and Natural Guardian of CASSANDRA DAUPHINOT, a Minor, 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 Hundred Seventy-five Dollars (\$375.00) with interest at 6% per annum from December 31, 1967 to the date of settlement.

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

FEB 3 1979


Lytle S. Gralock, Chairman


Theodore Jaffe, General Counsel

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-8431 involving asserted losses not covered under this Proposed Decision.

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 (1970).)