

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

IN THE MATTER OF THE CLAIM OF

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0488

Decision No. CU -3663

Counsel for claimant:

Lee, Mulderig & Celentano  
By Florindo M. DeRosa, Esq.

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 \$230,119.01, was presented by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., based upon the asserted loss of certain personal property in 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 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 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.

Claimant corporation, by an authorized officer, has certified that claimant was organized under the laws of Pennsylvania and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. Another officer has certified that as of February 15, 1967, 99.998% of claimant's outstanding capital stock was owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that claimant conducted an insurance business in Cuba through a general agent, a Cuban entity. The evidence includes extracts from claimant's books and records; copies of stock certificates representing claimant's ownership of 12 shares in Financiera Nacional de Cuba; a receipt, dated May 8, 1958, from the Banco Continental Cubano, evidencing claimant's deposit of said 12 shares of stock with that bank; copies of a sales agreement of August 26, 1960 and a letter from claimant's general agent in Cuba, dated September 23, 1960, evidencing claimant's purchase of certain 4% bonds in the face amount of \$125,000.00 and the deposit of said bonds with the Cuban Treasury Department; affidavits from officials of claimant and an official of claimant's general agent, submitted to the Department of State; as well as statements from officials of claimant to the Commission concerning this claim.

The Commission finds on the basis of the evidence of record that claimant owned certain items of personal property in Cuba; namely, a bank account

with the Banco Continental Cubano, 12 shares of stock in Financiera Nacional de Cuba, a debt due from its general agent in Cuba, and 4% bonds of Financiera Nacional de Cuba, Havana Aqueduct, 1954-1975, in the face amount of \$125,000.00.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. The Commission finds that claimant's assets in Cuba were nationalized on October 24, 1960 within the meaning of Title V of the Act, except as noted below.

Claimant has computed its claim as follows, the Cuban peso being on a par with the United States dollar:

Bank deposit with Banco Continental Cubano	\$ 10,155.83
12 shares of stock in Financiera Nacional de Cuba	1,200.00
Debt due from Cuban agent	95,483.18
4% bonds of Financiera Nacional de Cuba, Havana Aqueduct, 1954-1975 (face amount \$125,000.00)	<u>123,280.00</u>
Total	<u>\$230,119.01</u>

The Commission finds on the basis of the evidence of record that claimant owned a bank account with the Banco Continental Cubano, having a value of \$10,155.83 on October 24, 1960, the date of loss.

The Commission has found that Financiera Nacional de Cuba was a semi-public entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders of this entity. The Commission found that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its liabilities were assumed by Cuba; and that a claim for such loss arose under Title V of the Act on August 17, 1960, the date of liquidation. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.)

The Commission finds that the amount of the unpaid debt owing to claimant on August 17, 1960 on account of its interests in Financiera Nacional de Cuba was \$1,200.00.

The record establishes and the Commission finds that the amount due claimant from its general agent in Cuba was \$95,483.18 on October 24, 1960, the date of loss.

The remaining portion of the claim is based upon 4% bonds of Financiera Nacional de Cuba, Havana Aqueduct, 1954-1975.

As stated above, Financiera Nacional de Cuba was a semi-public entity that was liquidated on August 17, 1960, and all of its liabilities were assumed by the Government of Cuba. Since claimant acquired title to the bonds on August 26, 1960, after the date of liquidation, claimant acquired the status of a creditor of the Government of Cuba.

The Commission holds that the nationalization of claimant's assets constituted a repudiation of the debt by the Government of Cuba, and gave rise to a claim within the meaning of Title V of the Act. Accordingly, the Commission finds that claimant sustained a loss with respect to the 4% bonds on October 24, 1960.

Claimant has asserted a loss of \$123,280.00 with respect to the 4% bonds. It states that this amount represents the "book" value of the bonds. The Commission notes that claimant purchased the bonds at a cost of \$123,125.00, and that these very bonds had been "on loan" to the claimant and as loaned had been deposited with the Cuban Treasury Department pursuant to an agreement in 1954 between claimant and Banco Nunez.

In the absence of more convincing evidence concerning the value of the bonds, the Commission finds that these 4% bonds had a value of \$125,000.00, the face amount thereof, on October 24, 1960, the date of loss.

The Commission concludes that claimant sustained a loss within the meaning of Title V of the Act in the aggregate amount of \$231,839.01.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

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 respective dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 17, 1960	\$ 1,200.00
October 24, 1960	<u>230,639.01</u>
Total	<u>\$231,839.01</u>

CERTIFICATION OF LOSS

The Commission certifies that NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. 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 Two Hundred Thirty-one Thousand Eight Hundred Thirty-nine Dollars and One Cent (\$231,839.01) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

MAY 21 1969

*Leonard v. B. Sutton*  
LEONARD V. B. SUTTON, Chairman

*Theodore Jaffe*  
THEODORE JAFFE, Commissioner

*Sidney Feidberg*  
SIDNEY FEIDBERG, 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].)