

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

IN THE MATTER OF THE CLAIM OF

THE HOME INSURANCE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0584

Decision No. CU 3604

Counsel for claimant:

Nicholas J. Opinante, Esq.

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 THE HOME INSURANCE COMPANY in the amended amount of \$796,490.01, based upon the nationalization of its assets by the Government of 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.

The record shows that claimant was organized under the laws of New York. An officer of claimant has certified that more than 50% of the outstanding capital stock of claimant was owned by nationals of the United States at all pertinent times. Another officer of claimant has certified that as of November 30, 1965, approximately .4% of the outstanding capital stock of claimant was owned by nonnationals 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 establishes that claimant owned a branch office in Cuba from which it conducted an insurance business through authorized agents. This branch office contained physical assets as well as other items of property within the meaning of Section 502(3) of the Act.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized THE HOME INSURANCE COMPANY. The Commission holds that property in Cuba was nationalized on October 24, 1960, within the meaning of Title V of the Act, except as noted below.

The evidence includes a trial balance for claimant's Cuban branch as of September 30, 1960; a statement of assets and liabilities assembled from the information contained in that trial balance, which had been prepared by an accountant in Cuba and forwarded to claimant; copies of official receipts from the Cuban Treasury Department, evidencing the deposit by claimant of Cuban Government bonds in the face amount of \$135,000.00; as well as affidavits and statements from officials of claimant concerning the items of property for which claim was made.

Claimant initially had computed the amount of its claim as follows:

Cash in Banks	\$544,796.62
Accounts receivable (agents' balances)	166,045.75
Cuban Government 4-1/2% Bonds, due June 30, 1977	79,596.54
30 shares of Financiera Nacional de Cuba	3,000.00
Automobiles (depreciated)	2,182.60
Furniture & fixtures (depreciated)	<u>468.50</u>
Total claimed	<u>\$796,090.01</u>

The balance sheet for the branch office in Cuba was prepared on the basis of Cuban currency by a Cuban accountant. It is noted that the Cuban peso was on a par with the United States dollar. An examination of that balance sheet discloses certain discrepancies when compared with the foregoing claimed items of property. Although it is true that the balance sheet shows Cash in Banks in the amount of 544,796.62 pesos it also shows Petty Cash in the amount of 400.00 pesos, while claim is being made only for Cash in Banks in the amount of \$544,796.62. Further, the net amount of agents' balances, due from Cuban agents, is shown as 173,013.42 pesos in the balance sheet, whereas claim is made for this asset in the amount of \$166,045.75. Moreover, the amount of the claim, as computed by claimant, appeared to omit the amount of 450.00 pesos due from fieldmen, Cuban nationals, and other items.

Upon inquiry by the Commission concerning these matters, counsel for claimant stated that the claim had been computed on the following basis:

The Petty Cash and Advances to fieldmen had been added to the Agents' Balances (accounts receivable), resulting in a total of \$173,863.42. From this sum, the accounts payable in the amount of 7,826.39 pesos, shown in the balance sheet of September 30, 1960, was deducted, leaving a net amount of \$166,037.02. Counsel added that the discrepancy between that amount and the amount claimed, \$166,045.75, being \$8.72, could not be explained. He stated, furthermore, that out of the accounts payable, the items: Premium Taxes, Taxes Payable, Income Tax Withheld, and Onri Tax Withheld, constituted taxes due the Government of Cuba; and that claimant had inadvertently omitted two assets of its branch office which it wanted to include; namely, Stamps on

Hand in the amount of \$377.50 and Prepaid Insurance in the amount of \$22.50, as shown in the balance sheet. However, counsel stated on behalf of claimant that the item, Contingent Commission Receivable, in the amount of \$2.39 was not to be included because it was contingent and negligible.

Having carefully considered this entire matter on the basis of all the evidence of record, the Commission finds that on October 24, 1960, the date of loss, the values of claimant's assets at its branch in Cuba were as follows, excluding the item, Securities Owned, appearing in the balance sheet, which will be discussed below:

Cash in Banks	\$544,796.62
Petty Cash	400.00
Agents' Balances Due	173,013.42
Advances to Fieldmen	450.00
Automobile (depreciated)	2,182.60
Furniture & Fixtures (depreciated)	468.50
Stamps on Hand	377.50
Prepaid Insurance	<u>22.50</u>
	\$721,711.14

The record establishes that claimant had on deposit with the Cuban Treasury Department bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, in the face amount of \$135,000.00. The amount claimed for these bonds, \$79,596.54, represents claimant's costs in purchasing the bonds in 1939. Records available to the Commission disclose that Cuba first defaulted on the payment of interest with respect to such bonds on December 31, 1960. For each \$1,000.00 in face value of these bonds, there were attached interest coupons in the amount of \$22.50 each, payable on June 30 and December 30 of each year until maturity on June 30, 1977.

The Commission has held that the failure of the Government of Cuba to make an obligated payment on a debt, occurring for the first time after January 1, 1959, constituted a taking of property of the creditor within the meaning of Title V of the Act. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.) The Commission therefore finds that on October 24, 1960, the date of loss, the Government of Cuba was indebted to claimant on these bonds in the aggregate amount of \$136,923.75, representing \$135,000.00 in principal, and interest in the amount of \$1,923.75.

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 held that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all its assets 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 unpaid debt of Cuba to claimant on August 17, 1960 on account of claimant's interests in Financiera Nacional de Cuba was \$3,000.00, representing the face amount of these securities.

Accordingly, the Commission finds that the aggregate amount of claimant's assets in Cuba was \$861,634.89.

It is noted that claimant did not own a legal entity in Cuba, but merely carried on an insurance business through a branch office. Thus, we are not here dealing with the nationalization of a Cuban corporation in which case all of its liabilities would have to be taken into consideration. Accordingly, the Commission consistently has not reduced the value of a United States corporate claimant's branch in Cuba by any liabilities in its determinations under Title V of the Act, except for taxes owing to the Republic of Cuba which the Commission concluded was appropriate on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

On the basis of the evidence of record, the Commission finds that claimant was indebted to Cuba on account of the following, as shown in the balance sheet of September 30, 1960:

Premium Taxes	\$6,060.76
Taxes Payable	606.03
Income Tax Withheld	119.85
Onri Tax Withheld	<u>719.71</u>
Total Taxes Payable	<u>\$7,506.35</u>

The Commission, therefore, finds that the aggregate amount of claimant's losses was \$854,128.54.

It will be noted that the total amount of the losses 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 amounts 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 date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 17, 1960	\$ 3,000.00
October 24, 1960	<u>851,128.54</u>
	\$854,128.54

CERTIFICATION OF LOSS

The Commission certifies that THE HOME INSURANCE 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 Eight Hundred Fifty-four Thousand One Hundred Twenty-eight Dollars and Fifty-four Cents (\$854,128.54) with interest 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

APR 16 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 for 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, 32 Fed. Reg. 412-13 (1967).)