

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

IN THE MATTER OF THE CLAIM OF

HENRY SINGHI McAVOY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0742

Decision No. CU **3531**

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 HENRY SINGHI McAVOY in the amount of \$73,000.00 based upon the asserted loss of real and personal property in Cuba. Claimant has been a national of the United States since birth.

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.

Claimant has asserted his losses as follows:

Improved realty	\$30,000.00
Cashiers checks	2,000.00
Currency	40,000.00
Bond	<u>1,000.00</u>
	\$73,000.00

Claimant states that on April 17, 1961, while on his way to work, he was arrested by the Cuban militia and imprisoned in La Cabana Prison until July 21, 1961. At the time of his release he was advised to leave the country, which he did on July 28, 1961. Before leaving Cuba, claimant left with a private depository in Havana various items of personal property.

Evidence of record includes the original document entitled Sales Contract 777, executed on December 23, 1959 in Havana, Cuba, by which claimant acquired, for the purchase price of \$27,000.00, Parcel 19, Lot 24 of "San Martin" en Tarara, Barrio of Bacuranao, Municipality of Guanabacoa, Cuba. The sale was for the land, measuring 450 square meters, and the house thereon. Based on the record, the Commission finds that claimant was the owner of said realty.

The Government of Cuba, on December 6, 1961, published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds, and securities of persons who had left the country.

As stated previously, claimant had departed from Cuba on July 28, 1961. The Commission finds, in absence of evidence to the contrary, that claimant's real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant states that the house and lot had a value of \$30,000.00, but has submitted no evidence to establish this figure. The record does show, however, that claimant purchased the house and lot for \$27,000.00 in 1959.

In the absence of other evidence, the Commission finds that the value of claimant's improved real property was \$27,000.00 and that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the taking of his realty by the Government of Cuba on December 6, 1961.

Evidence of record establishes that claimant was the owner of 4,000 pesos on deposit with the Havana branch of the Royal Bank of Canada, payable on demand. In the absence of evidence to the contrary, the Commission finds that these funds were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989 (supra).

Part of the claim is based on the asserted loss of Cuban pesos. The record shows these peso notes were placed with a private depository in Havana on July 28, 1961. On August 4, 1961 there was published in the Official Gazette Law 963, which ordered a currency exchange to be carried out on August 6 and 7, 1961. The law provided that after August 7, 1961, old currency was to be null and of no value. Article XI of Law 963 declared that all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State, was to be null and of no legal force.

This depository aforementioned being outside the jurisdiction of the Cuban State, the Commission holds that claimant's Cuban peso notes became automatically null and of no legal effect on August 4, 1961, the date of the promulgation of Law 963. (Claim of Betty G. Boyle, CU-3473).

Claimant asserts that the value of his Cuban peso notes was \$40,000.00, but has submitted no evidence to establish this figure. The record does show, however, that claimant left 34,000 in peso notes with said private depository in Havana on July 28, 1961.

Based on the entire record, the Commission finds that the value of claimant's Cuban peso notes was \$34,000.00 and that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the taking of his property interest therein by the Government of Cuba on August 4, 1961.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to May 1, 1961, has been the owner of three bonds of the issue known as 4% Veterans, Courts and Public Works Bonds of the Republic of Cuba, 1953-1983, bearing Nos. 3334, 3335 and 3336, in the principal amount of \$1,000.00 each. 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 these bonds on May 1, 1961 (See Foreign Bondholders Protective Council, Inc., Annual Report 1962-1964, p. 42), 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 a bondholder within the meaning of Section 503(a) of the Act. This question has been affirmatively decided by the Commission. The Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68, determined that the failure of the Government of Cuba to make an obligated payment on December 31, 1960, with respect to its 4 1/2% Bonds of the External Debt, 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.

Accordingly, the Commission concludes that claimant sustained a loss on the face amount of his bonds on May 1, 1961 as a result of the actions of the Government of Cuba. Claimant has submitted no evidence to establish non-payment of interest which may have accrued prior to May 1, 1961. Therefore, the Commission finds that the amount of loss sustained by claimant on the loss of his three (3) bonds is the face amount thereof, \$1,000.00 each, or a total of \$3,000.00.

The Commission has decided that in the 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.)

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

SUMMARY

		<u>DATE OF LOSS</u>
Improved realty	\$27,000.00	December 6, 1961
Money on deposit	4,000.00	December 6, 1961
Currency	34,000.00	August 4, 1961
Bonds	<u>3,000.00</u>	May 1, 1961
Total	\$68,000.00	

CERTIFICATION OF LOSS

The Commission certifies that HENRY SINGHI McAVOY suffered a loss, as a result of the 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 Sixty-Eight Thousand Dollars (\$68,000.00) 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

FEB 26 1969

*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).)

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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.