

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

IN THE MATTER OF THE CLAIM OF

NELSON I. FISHMAN
and
SARA W. FISHMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0822

Decision No. CU 2780

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 NELSON I. FISHMAN and SARA W. FISHMAN and is based upon the asserted loss of \$75.00 sustained in connection with the ownership of a participation interest in the Cuban Venezuelan Oil Voting Trust. Claimants have been nationals of the United States since their births.

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.

On the basis of evidence of record, the Commission finds that claimants are, and since prior to November 23, 1959, have been the joint owners of 25 units of participation in the Cuban Venezuelan Oil Voting Trust (hereafter referred to as "the Trust"). The participation units in question are represented by certificate No. NY42286.

The record discloses that the properties in Cuba owned or controlled by the Trust were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, pursuant to Law No. 635, published on that date. This corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder, or the owner of a participation interest in such a corporation, is entitled to file a claim based upon the securities in question, which represent an interest in the losses sustained by a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis, & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In determining the value of the interest owned by claimants in the Trust, the Commission has considered information submitted by officers

and stockholders of the Trust, balance sheets for the year ended December 31, 1959, the Trust's annual report for that year, and other evidence of record submitted in this and other claims before the Commission. On the basis of the entire record, the Commission concludes that the dollar loss sustained by the Trust on November 23, 1959 was \$1,106,388.76, and that the loss per unit of participation for each of the 9,247,162 units was \$0.11971, or 11.97 cents. (See Claim of Felix Heyman, Claim No. CU-0412.)

Accordingly, in the instant claim, the Commission finds that claimants, as holders of 25 units of participation in the Trust, suffered a loss in the amount of \$2.99 within the meaning of Title V of the Act, when the properties owned or controlled by the Trust were nationalized or otherwise taken by the Government of Cuba on November 23, 1959.

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.)

Accordingly, the Commission concludes that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from November 23, 1959, the date of loss, to the date on which provisions are made for the settlement thereof.

CU-0822

CERTIFICATION OF LOSS

The Commission certifies that NELSON I. FISHMAN and SARA W. FISHMAN jointly 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 Dollars and Ninety-Nine Cents (\$2.99) with interests at 6% per annum from November 23, 1959 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 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 claimants establish 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, 32 Fed. Reg. 412-13 (1967).)