

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

IN THE MATTER OF THE CLAIM OF

CARMELA N. ALVAREZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0903

Decision No. CU -1502

AMENDED PROPOSED DECISION

By Proposed Decision issued April 10, 1968, the Commission denied this claim for failure of proof. Since then, satisfactory evidence has been submitted, and the Proposed Decision is hereby amended.

Claimant, CARMELA N. ALVAREZ, who owned a bond issued by Cuba Northern Railway Company, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Kentucky Home Mutual Life Insurance Company (Claim No. CU-1339 which we incorporate herein by reference), we held that the properties of the Railway 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 \$1000 bond of \$682.56 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Kentucky decision; that she was an American national at the requisite times; that she has been the

owner of 50 bonds issued by Cuban Northern Railways Company since prior to October 13, 1960; and that she suffered a loss in that connection in the amount of \$34,128.00 within the meaning of Title V of the Act.

The Commission further finds that claimant owned 4% debentures of the Cuban Telephone Company in the face amount of \$4,000.

The Commission has held that a claim based upon debts of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960.

The Commission finds that on August 6, 1960, the date of loss, the Cuban Telephone Company owed claimant \$4,106.64 representing \$4,000.00 in principal and interest in the amount of \$106.64. Thus, the claimant sustained a loss in the amount of \$4,106.64 in this connection, all within the meaning of Title V of the Act.

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 in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 4,106.64
October 13, 1960	<u>\$34,128.00</u>
	\$38,234.64

Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that CARMELA N. ALVAREZ 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 Thirty-Eight Thousand Two Hundred Thirty-Four Dollars and Sixty-Four Cents (\$38,234.64) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

AUG 19 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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 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].)

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IN THE MATTER OF THE CLAIM OF

CARMELA N. ALVAREZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0903

Decision No. CU 1502

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$48,968.00, was presented by CARMELA N. ALVAREZ and is based on an interest in bonds issued by the Cuba Northern Railway Company and the Cuban Telephone Company. Claimant has been a national of the United States since her naturalization on May 3, 1937.

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 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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain bonds issued by the Cuban Northern Railway Company and the Cuban Telephone Company; however, the claimant has submitted no documentary evidence in support of her claim. By Commission letter of December 19, 1966, claimant was advised as to the type of evidence proper for submission to establish her claim under the Act. Claimant replied by letter of December 22, 1966 that she hesitated to submit the securities by mail. Thereafter, by letters of December 28, 1966, January 5, 1967 and June 1, 1967, claimant was again requested to submit the requisite evidence and the securities by registered mail. The Commission's letter of June 1, 1967 also informed claimant that, if the requested evidence were not received within 45 days from date of the letter, it might become necessary to determine the claim on the basis of the present record. Claimant again responded on June 3, 1967 that she did not wish to send the securities for fear that they would get lost.

She also stated that she had inherited these bonds in 1954 but that she did not have any papers relating to the inheritance. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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CU-0903