

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

IN THE MATTER OF THE CLAIM OF

MILDRED W. BROWN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0951

Decision No. CU-1684

AMENDED PROPOSED DECISION

By Proposed Decision dated April 10, 1968, the Commission denied this claim on the ground that claimant failed to meet the burden of proof in that she failed to establish ownership of rights and interests in property by a national of the United States which was lost as a result of the nationalization, expropriation, intervention or other taking by the Government of Cuba. Subsequently, claimant furnished additional evidence.

Full consideration having been given to the additional evidence, it is ORDERED that the Proposed Decision be and the same is hereby amended as follows:

On the basis of evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of two bonds in the original face amount of \$1,000.00 each issued by the Cuba Railroad Company and known as "Improvement and Equipment Gold Bond, 4%, due June 30, 1970" issued under an Indenture of July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, with Chemical Bank New York Trust Company as Successor Trustee. The bonds in question are Nos. M 2347 and M 2348.

The record discloses that the Cuba Railroad Company was organized in the State of New Jersey as a wholly-owned subsidiary of Consolidated Railroads of Cuba, a Cuban corporation. The properties of the Cuba Railroad Company were nationalized by Cuban Law 890 published in the Cuban Official Gazette on October 13, 1960. Although the Cuban Railroad Company was organized under the laws of the State of New Jersey, it was owned by a Cuban entity and it 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. Therefore, claimant is entitled to file this claim based upon the bonds in question which represent a debt of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Edgar F. Corliss, Claim No. CU-0785).

By Indenture dated July 1, 1910, and Supplemental Indentures dated July 1, 1952 and December 1, 1959, the Cuba Railroad Company issued Dollar bonds secured by mortgage upon the realty and equipment of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were reissued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance. The record discloses that the last payment of interest on the bonds was made on November 1, 1958.

The Commission finds that the total amount of the unpaid indebtedness on claimant's bonds was \$1,369.36 including the principal amount of \$635.00 each and the interest due on each bond from November 1, 1958 to October 13, 1960, the date of loss, in the amount of \$49.68.

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 by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MILDRED W. BROWN 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 One Thousand Three Hundred Sixty-Nine Dollars and Thirty-Six Cents (\$1,369.36) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

MAY 22 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above-listed certificates and/or bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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 Amended 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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Act of 1949, as amended

Claim No. CU-0951

Decision No. CU 1684

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 \$2,000.00, was presented by MILDRED W. BROWN and is based upon the asserted loss of a bondholder's interest in the Cuba Railroad Company. Claimant has been a national of the United States since her birth in the United States.

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).)

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claimant states that she is the owner of two bonds issued by the Cuba Railroad Company, numbers M 2347 and M 2348, which have been submitted to the Commission. The record does not establish that claimant acquired the subject bonds prior to October 13, 1960 when a loss was incurred on such bonds. Claimant asserts that she inherited the bonds in May 1955, upon the death of her mother.

By Commission letter of January 24, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Claimant submitted, by letter dated January 28, 1967, the original

bonds above mentioned and a copy of her birth certificate. By letter dated February 12, 1968, further suggestions were made to claimant. On March 12, 1968, the suggestions were repeated. No evidence in response to these suggestions has been received to date.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish that the claim was owned by a national or nationals of the United States on the date of loss and continuously to the date of filing with the Commission. 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- 0951