

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

IN THE MATTER OF THE CLAIM OF

AUSTIN WILLIAM FAILEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1134

Decision No. CU 2094

Counsel for claimant:

Henry Goldman

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by AUSTIN WILLIAM FAILEY and is based upon the asserted loss of \$1,600.00 sustained in connection with the ownership of a stock interest in Compania Cubana, S. A. 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.

The record contains stock certificate No. US419 issued to the claimant on November 4, 1959 for 26 shares of capital stock in Compania Cubana, S. A. On the basis of all the evidence of record, including the foregoing certificate, the Commission finds that the claimant owned, continuously from the date of loss to the presentation of this claim, 26 shares of the capital stock issued by Compania Cubana, S. A.

On August 6, 1960, the Government of Cuba published Resolution No. 1 in its Official Gazette (pursuant to Law 851) which listed as nationalized Compania Cubana, S. A. Accordingly, the Commission finds that Compania Cubana, S. A. was nationalized by the Government of Cuba on August 6, 1960. Compania Cubana, S. A. was incorporated in Cuba and thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including 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. In this type of situation it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest in the nationalized company. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The Commission concludes that as a result of the nationalization by the Government of Cuba of Compania Cubana, S. A., claimant suffered a loss within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement,

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value of the interest owned by claimant in Compania Cubana, S. A., the Commission has considered claimant's assertions, a 1959 balance sheet for the company with supporting notes as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$10,068,033.00 was available for distribution at the time of loss among the 129,004 shares of capital stock issued by Compania Cubana, S. A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Compania Cubana, S. A. was \$78.0443 per share of the capital stock issued and held at the time of loss. (See Claim of George E. Sanford, Claim No. CU-2923.)

Accordingly, in the instant claim, the Commission finds that claimant, AUSTIN WILLIAM FAILEY, as holder of 26 shares of capital stock, suffered a loss in the amount of \$2,029.15 within the meaning of Title V of the Act, as a result of the nationalization of Compania Cubana, S. A. by the Government of Cuba on August 6, 1960.

It will be noted that the total amount of loss 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.)

The Commission therefore concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from August 6, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that AUSTIN WILLIAM FAILEY sustained 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 Thousand Twenty-Nine Dollars and Fifteen Cents (\$2,029.15) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

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

JUL 24 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 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).)