

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

IN THE MATTER OF THE CLAIM OF

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2285

Decision No. CU 2027

Counsel for Claimant:

Richard F. Ober, Esq.

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 FIDELITY AND DEPOSIT COMPANY OF MARYLAND, in the amount of \$64,625.00 in connection with bonds known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977.

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 502(1)(B) of the Act defines the term "national of the United States" as 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of Maryland, and that at all times between the date of loss, and presentation of this claim on April 27, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that more than 99% of its stock was held by nationals of the United States.

An examination of the record in this claim discloses that on March 16, 1954 the Ministry of the Treasury of Cuba issued a Decree, Number 1323, wherein corporations or individuals acting as bonding companies within Cuba, were thenceforth required, in order to operate as bonding companies, to furnish a surety bond or deposit to the Treasurer General of the Republic, in cash funds or in securities issued by the Republic, in the amount of \$50,000.00 in order to qualify for a license. This sum represented an increase over the \$25,000.00 surety bond required by Decree No. 467 of September 7, 1934.

Pursuant to both of these laws claimant purchased 50 bonds known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, each in the principal amount of \$1,000.00 with 34 interest coupons attached, each in the amount of \$22.50, payable semiannually, the earliest

maturing on December 31, 1960. When these bonds were purchased, they were deposited with the Treasurer General of Cuba, as required by the aforementioned laws, and certificates of deposit were issued to claimant's agent in Cuba, the Trust Insurance Agency. Claimant's agent retained the original certificates of deposit in its Havana office, while copies of these certificates were forwarded to claimant. Claimant has never received the original certificates of deposit and they have remained in Cuba from the time the bonds were purchased until the present. Copies of the certificates of deposit are a part of the evidence of record. Based upon all of the evidence of record, the Commission finds that claimant owned 50 bonds known as 4-1/2% bonds of the External Debt of the Republic of Cuba, 1937-1977.

There follows a listing of such bonds, their dates of purchase, dates of deposit, and receipt numbers issued therefor:

<u>Denomination of Bond</u>	<u>Certificate of Deposit Number</u>	<u>Date Deposited</u>	<u>Date Purchased</u>
\$1,000	78686	July 8, 1946	July 11, 1945
1,000	24468	February 6, 1946	January 31, 1946
1,000	30445	February 6, 1946	January 31, 1946
1,000	77861	July 8, 1946	February 7, 1946
1,000	80686	July 8, 1946	February 7, 1946
1,000	78139	January 8, 1947	April 8, 1946
1,000	7226	January 20, 1948	March 10, 1947
1,000	7227	January 20, 1948	March 10, 1947
1,000	7228	January 20, 1948	March 10, 1947
1,000	72451	July 9, 1948	June 23, 1948
1,000	74312	July 9, 1948	October 24, 1946
1,000	75946	July 9, 1948	October 24, 1946
1,000	80093	July 9, 1948	June 23, 1948
1,000	67213	July 3, 1952	June 3, 1952
1,000	67215	July 3, 1952	June 3, 1952
1,000	70287	July 8, 1953	June 3, 1952
1,000	70288	February 26, 1954	June 3, 1952
1,000	16614	April 6, 1954	April 5, 1954
1,000	19214	April 6, 1954	April 5, 1954
1,000	19688	April 6, 1954	April 5, 1954
1,000	42756	April 6, 1954	April 5, 1954
1,000	60114	January 10, 1955	December 14, 1954
1,000	60115	January 10, 1955	December 14, 1954
1,000	60116	January 10, 1955	December 14, 1954
1,000	60233	January 10, 1955	December 14, 1954

<u>Denomination of Bond</u>	<u>Certificate of Deposit Number</u>	<u>Date Deposited</u>	<u>Date Purchased</u>
1,000	80094	January 10, 1956	June 23, 1948
1,000	9472	January 10, 1956	November 2, 1953
1,000	83276	January 10, 1956	August 2, 1955
1,000	83776	July 2, 1956	August 2, 1955
1,000	83734	January 7, 1957	August 2, 1955
1,000	83637	January 7, 1957	August 2, 1955
1,000	83777	January 7, 1957	August 2, 1955
1,000	83782	January 7, 1957	August 2, 1955
1,000	61418	January 7, 1957	September 26, 1956
1,000	37577	January 7, 1957	September 26, 1956
1,000	76764	June 28, 1957	March 1, 1957
1,000	76765	June 28, 1957	March 1, 1957
1,000	13339	January 10, 1958	March 1, 1957
1,000	10339	January 10, 1958	March 1, 1957
1,000	80712	January 10, 1958	March 1, 1957
1,000	80713	January 10, 1958	March 1, 1957
1,000	9386	January 10, 1958	March 1, 1957
1,000	69544	January 10, 1958	September 26, 1956
1,000	70588	June 30, 1958	April 2, 1958
1,000	70589	June 30, 1958	April 2, 1958
1,000	70590	June 30, 1958	April 2, 1958
1,000	69559	December 31, 1958	September 26, 1956
1,000	70592	December 31, 1958	April 2, 1958
1,000	71117	June 30, 1959	March 19, 1958
1,000	69107	January 8, 1960	March 19, 1958

Such bonds, as a debt owed by the Government of Cuba, clearly constitute 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 the payment of interest on bonds of this issue on December 31, 1960 (See Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p.52), 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 the bondholder within the meaning of Section 503(a) of the Act. This question has been affirmatively decided by the Commission. In the Claim of Clemens R. Maise, Claim No. CU-3191, the Commission held that

the failure of the Government of Cuba to make the obligated payment on December 31, 1960, 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. This holding is consistent with the clearly expressed intent of the Committee on Foreign Affairs of the House of Representatives in its favorable report on H.R. 9336, the bill which upon enactment amended Public Law 88-666. (See H.R. Rep. No. 706, 89th Cong. 1st Sess., 3 (1965).)

The Commission finds that the amount of the unpaid indebtedness on claimant's bonds on December 31, 1960, the date of loss, was \$51,125.00 including the principal amount of \$50,000.00 and the total interest due on December 31, 1960 in the amount of \$1,125.00.

The Commission has decided that in certification of loss 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 31, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CU-2285

CERTIFICATION OF LOSS

The Commission certifies that FIDELITY AND DEPOSIT COMPANY OF MARYLAND 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 Fifty-One Thousand One Hundred Twenty-Five Dollars (\$51,125.00) with interest thereon at 6% per annum from December 31, 1960 to the date of settlement.

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

26 JUN 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).)