

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

IN THE MATTER OF THE CLAIM OF

OCCIDENTAL LIFE INSURANCE
COMPANY OF NORTH CAROLINA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2353

Decision No. CU
3794

Counsel for claimant:

James K. Dorsett, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$835,902.09, was presented by OCCIDENTAL LIFE INSURANCE COMPANY OF NORTH CAROLINA, based upon the nationalization of its assets in Cuba.

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.

The record shows that claimant was organized under the laws of North Carolina. An authorized officer of claimant has certified that at all pertinent times 100% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It appears from the evidence of record that claimant had been authorized to conduct an insurance business in Cuba since 1947. In connection with these operations, claimant owned certain assets in Cuba; namely, bank deposits, stock interests, certain bonds, and mortgages against properties owned by Cubans held as security for loans made to said Cubans. The record contains extracts from claimant's books and records, certified to be accurate by claimant's Assistant Treasurer who has custody and control over claimant's financial books and records; receipts from The National City Bank of New York, Havana Branch, and from authorities of Cuba indicating the deposit of securities by claimant; copies of stock certificates; as well as bank statements and statements from officials of claimant concerning this claim.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the OCCIDENTAL LIFE INSURANCE COMPANY. The Commission finds that claimant's property in Cuba was nationalized on October 24, 1960, within the meaning of Title V of the Act, except as noted below.

Claimant has computed its claim as follows:

Bank Deposits	\$302,501.63
Stock interests	12,300.00
Bonds	209,055.42
Mortgages	184,401.86
Policy Loans	<u>127,643.18</u>
	<u>\$835,902.09</u>

Bank Deposits

Claimant's Assistant Treasurer has certified under date of August 17, 1967 that claimant's books and records at Raleigh, North Carolina show the following bank balances in Cuban banks as of October 24, 1960 the date of loss (with the peso being on a par with the United States dollar):

National City Bank of New York	\$292,552.13
Banco Agricola E. Mercantil	1,449.50
Banco Agricola E. Industrial	<u>8,500.00</u>
Total	<u>\$302,501.63</u>

On the basis of the foregoing evidence, the Commission finds that on October 24, 1960, the date of loss, claimant owned bank deposits maintained in banks in Cuba with balances in claimant's favor aggregating the amount of \$302,501.63

Stock Interests

The record establishes and the Commission finds that claimant owned 23 shares of stock in Financiera Nacional de Cuba with a par value of 100 pesos per share, equivalent to \$100.00 per share. These shares had been purchased by claimant at par, and were carried on its books at that value.

The Commission has found that Financiera Nacional de Cuba was a semipublic entity, controlled by the National Bank of Cuba, an agency of the Government of Cuba, and that Cuba had guaranteed the investments of stockholders of this entity. The Commission held that pursuant to Law 865 of August 17, 1960, Financiera Nacional de Cuba was liquidated

and all its assets were assumed by Cuba, and that a claim for the loss of a debt of the Government of Cuba arose under Title V of the Act on August 17, 1960, the date of liquidation. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.) The Commission finds that the unpaid debt of Cuba to claimant on August 17, 1960 on account of claimant's interests in Financiera Nacional de Cuba was \$2,300.00, representing the face amount of these securities.

The record further shows that claimant owned 1,000 shares of preferred stock in the Anglo-American Insurance Company, S.A., with a par value of \$10.00 per share. These shares, likewise, had been purchased by claimant, and were carried on its books, at par value i.e. at \$10.00 per share. Evidence available to the Commission indicates that this corporation was nationalized by the Government of Cuba on April 28, 1964 pursuant to Resolution 1032 under Law 890. The Commission, however, finds that claimant sustained a loss with respect to these shares of stock on October 24, 1960 when all of its assets in Cuba were nationalized. In the absence of evidence to the contrary, the Commission finds that the value of these shares of stock on October 24, 1960 was \$10,000.00, the face amount of these securities, as indicated by claimant's books and records.

Accordingly, the Commission holds that the aggregate loss sustained by claimant with respect to its stock interests was \$12,300.00.

Bonds

The evidence establishes that claimant had on deposit with the First National City Bank of New York, Havana Branch, the following bonds:

1. Bonds in the face amount of \$19,000.00, of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983;
2. Bonds in the face amount of \$64,000.00, of the issue known as 4% Bonds of the Public Debt of Cuba, 1950-1980. It further appears that claimant had on deposit with Cuban authorities bonds of the same issue in the face amount of \$25,000.00; and,

3. Bonds in the face amount of \$100,000.00, of the issue known as 5-1/4% Bonds of Fondo de Inversiones, F.H.A., due June 30, 1965.

The evidence establishes that the Government of Cuba defaulted on the payment of interest on the 4% Veterans, Court and Public Works bonds of 1953-1983 on May 1, 1961, the last payment of interest having been made for the period ending November 1, 1960. (See Claim of Westchester Fire Insurance Company, Claim No. CU-1703.) The Commission, therefore, finds that on October 24, 1960, the date of loss, Cuba owed claimant \$19,000.00 with respect to these 4% bonds.

Evidence available to the Commission establishes that the 4% bonds of the Public Debt of Cuba 1950-1980 had attached interest coupons in the amount of \$20.00 each, payable semiannually on June 30 and December 31, with respect to each \$1,000.00 bond, until maturity on June 30, 1980. (See Claim of Hartford Fire Insurance Company, Claim No. CU-0021.) Extracts from claimant's records show that interest on these bonds was last paid for the semiannual period ending June 30, 1960. Accordingly, the Commission finds that on October 24, 1960, the date of loss, Cuba owed claimant \$90,124.96, representing \$89,000.00 in principal and interest in the amount of \$1,124.96.

Evidence available to the Commission shows that the 5-1/4% Fondo de Inversiones bonds due June 30, 1965 had been issued by a Cuban Government agency, equivalent to our Federal Housing Administration. [Lanzas, A Statement of the Laws of Cuba in Matters Affecting Business 322-323 (2d ed. 1958).] Extracts from claimant's records show that interest on these bonds was last paid for the period ending June 30, 1960. Accordingly, the Commission finds that on October 24, 1960, the date of loss, Cuba owed claimant \$101,662.42, representing \$100,000.00 in principal and interest in the amount of \$1,662.42.

Therefore, the aggregate loss sustained by claimant with respect to the foregoing bonds was \$210,787.38.

Mortgages

The Commission finds on the basis of the evidence of record, including applications for mortgage loans and extracts from claimant's records

that claimant had granted 15 loans to certain Cubans, secured by mortgages on the real properties of the debtors. The Commission has held that all Cuban mortgages were cancelled on October 14, 1960 pursuant to the Urban Reform Law. (See Claim of Executor of the Estate of Marita Dearing de Lattre, Deceased, Claim No. CU-0116.) The following, obtained from the evidence of record, shows with respect to each mortgage as of October 14, 1960, the date of loss, the unpaid principal amount, the rate of interest set forth in the mortgage agreement, the period of time for which interest was last paid and the amount of unpaid interest due:

	<u>Unpaid Principal</u>	<u>Rate of Interest</u>	<u>Period Last Paid</u>	<u>Interest Due</u>
1.	\$ 14,698.98	5%	July 1, 1960	\$ 211.86
2.	12,446.06	6%	July 1, 1960	216.31
3.	1,893.95	4%	Sept. 1, 1960	9.25
4.	16,784.27	6%	Nov. 1, 1959	960.70
5.	11,371.16	6%	Oct. 1, 1960	27.06
6.	11,653.79	6%	July 1, 1960	202.54
7.	4,689.69	6%	Feb. 1, 1959	480.13
8.	19,662.85	6%	Dec. 25, 1959	951.68
9.	29,446.96	4%	Jan. 26, 1960	942.29
10.	13,792.72	5%	July 1, 1960	199.29
11.	16,766.53	4%	Nov. 1, 1959	640.83
12.	2,911.61	6%	Nov. 1, 1960	--
13.	16,876.24	5%	Sept. 1, 1960	103.08
14.	6,592.94	6%	Oct. 1, 1960	15.69
15.	<u>4,794.11</u>	6%	June 1, 1960	<u>107.29</u>
	<u>\$184,401.86</u>			<u>\$5,068.00</u>

The Commission holds that the aggregate loss sustained by claimant on October 14, 1960 with respect to its mortgages was \$189,469.86.

Policy Loans

Claimant has asserted a loss in the amount of \$127,643.18, representing approximately 200 loans made to Cubans "secured by the cash surrender value of policies".

Inasmuch as these loans were secured by funds in the hands of claimant, the Commission suggested under date of February 18, 1969 the submission of evidence establishing that this portion of the claim is based upon a nationalization, expropriation, intervention or other taking of claimant's property by Cuba within the purview of Title V of the Act,

and for which asserted loss claimant had not already been compensated from the collateral funds in its possession. No reply was received from counsel or claimant either to this inquiry or to a "follow-up" letter of the Commission, dated April 17, 1969.

Upon consideration of this matter, the Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of its claim. Accordingly, this portion of the claim is denied.

Claimant's losses may be summarized as follows:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Bank deposits	October 24, 1960	\$302,501.63
23 shares of Financiera Nacional de Cuba	August 17, 1960	2,300.00
1,000 shares of Anglo-American Insurance Company, S.A.	October 24, 1960	10,000.00
4% Bonds (1953-1983)	October 24, 1960	19,000.00
4% Bonds (1950-1980)	October 24, 1960	90,124.96
5-1/4% Bonds due June 30, 1965	October 24, 1960	101,662.42
Mortgages	October 14, 1960	<u>189,469.86</u>
	Total	<u>\$715,058.87</u>

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 respective dates 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 17, 1960	\$ 2,300.00
October 14, 1960	189,469.86
October 24, 1960	<u>523,289.01</u>
Total	<u>\$715,058.87</u>

CERTIFICATION OF LOSS

The Commission certifies that OCCIDENTAL LIFE INSURANCE COMPANY OF NORTH CAROLINA 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 Seven Hundred Fifteen Thousand Fifty-eight Dollars and Eighty-seven Cents (\$715,058.87) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

30 JUL 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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 for 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).)