

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

IN THE MATTER OF THE CLAIM OF

MARIANNA HERMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4894

Decision No. CU-1042

Counsel for claimant:

Butler & Jefferson
By: James G. Butler, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision of January 24, 1968, the Commission denied this claim on the ground that claimant had failed to establish ownership or rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba, or that such property had been continuously owned by United States nationals at all times between the date of loss and the date on which the claim was filed. Subsequent to the issuance of the Proposed Decision, claimant, through counsel, submitted additional supporting evidence to the Commission. Full consideration having been given to all of the evidence of record, it is

ORDERED that the Proposed Decision be amended as follows:

This claim, for an unspecified amount, is based upon the ownership of sixteen bonds issued by Cuba Northern Railways Company. Claimant, MARIANNA HERMAN, has been a national of the United States since on or before March 25, 1960.

The record shows that on and prior to October 13, 1960, claimant's husband (Norman B. Herman) owned six bonds in the original face amount of \$1,000.00 each, issued by the Cuba Northern Railways Company and known as "First Mortgage Gold Bonds, 4%, due June 30, 1970" (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee.

The bonds owned by Norman B. Herman are Nos. TRM 704 to 709, inclusive. Norman B. Herman died testate on April 7, 1960.

The record further establishes that on and prior to October 13, 1960, ten bonds in the original face amount of \$1,000.00 each, of the same company and issue as those described in the paragraph immediately preceding herein, were owned by Globe, Inc., a corporation organized under the laws of the State of Nevada. Norman B. Herman held 100% of the outstanding capital stock of Globe, Inc. The bonds owned by the Nevada corporation are Nos. TRM 710 to 719, inclusive.

Under the will of Norman B. Herman, a certified copy of which is on record, MARIANNA HERMAN received the bulk of the decedent's estate, either outright or in trust, after several specific cash bequests were made. It appears that claimant received the bonds owned individually by her husband in her capacity as legatee, and that the capital stock of Globe, Inc. became a part of the Trust res. Globe, Inc. was dissolved on January 27, 1961, and the net assets of the corporation went into the trust; the net assets of the corporation included the railroad bonds upon which this claim is based. On February 15, 1963, the testamentary trust created under the will of Norman B. Herman was terminated by order of the appropriate local court, and the entire corpus of the trust was conveyed to claimant.

The record shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960.

The record discloses that Cuba Northern Railways Company was owned by Consolidated Railroads of Cuba, a Cuban corporation. Thus, neither of these railroads would qualify as a national of the United States under Section 502(1) of the Act for neither is 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 has succeeded to the loss of Norman B. Herman and of Globe, Inc., both United States nationals, and 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 Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

In 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company", 5-1/2% Gold Bonds were exchanged for First Mortgage Gold Bonds, 4%, due June 30, 1970. The interest on these bonds was payable on June 1 and December 1 of each year. The last payment of interest on these bonds was made on December 1, 1958.

Evidence of record establishes that the subject bonds had an outstanding principal balance of \$10,160.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$10,920.96, including the principal amounts of \$635.00 on each bond, and the interest due on each of the 16 bonds in the amount of \$47.56 for the period December 1, 1959 to October 13, 1960.

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 MARIANNA HERMAN succeeded to and 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 Ten Thousand Nine Hundred Twenty Dollars and Ninety-Six Cents (\$10,920.96) 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

JUN 19 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Claimant

Theodore Jaffe

Theodore Jaffe, 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 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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1042

Counsel for claimant:

James G. Butler, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, for an unspecified amount, was presented by MARIANNA HERMAN and is based upon an asserted loss sustained in connection with the ownership of bonds issued by Cuba Northern Railways Company. Claimant stated that she has been a national of the United States since 1924.

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).)

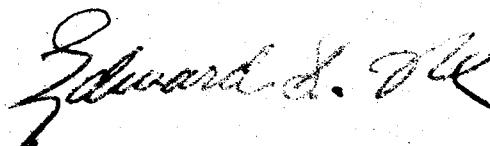
Through counsel, claimant asserted that she owned 16 gold bonds issued by Cuba Northern Railways Company, and that she acquired the bonds through inheritance from her late husband. No evidence in support of the claim has been received since the original claim was filed on September 5, 1967.

By Commission letter of September 18, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of October 19, 1967, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date. On November 21, 1967, counsel was invited to submit any evidence available within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

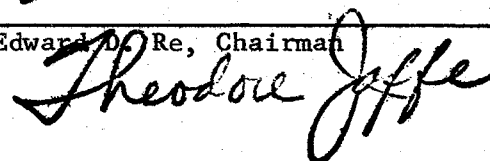
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Cuba, or that such property was continuously owned by United States nationals at all times between the date of loss and the date on which the claim was filed. 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

JAN 24 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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