

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

IN THE MATTER OF THE CLAIM OF

ELIAS GINNACOULIS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4940

Decision No. CU 1701

Counsel for claimant:

Griffin, Conway & Jones

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 \$24,962.30 was presented by ELIAS GINNACOULIS, and is based on his interest in bonds issued by the Consolidated Railroads of Cuba and the Cuba Railroad Company. Claimant has been a national of the United States since his naturalization on June 18, 1945.

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.

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 6 bonds in the original face amount of 18,000 pesos issued by the Consolidated Railroads of Cuba and known as a 3% Cumulative Income Debenture, due October 1, 2001, issued under an Indenture of February 1, 1953, with the United States Trust Company of New York as Trustee. The bonds in question are Nos. RV13587, RV13699, RV13700, RM19435, RM19436 and RM19418.

Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), was a Cuban corporation. The Consolidated Railroads of Cuba 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 "(B) 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 Consolidated Railroads of Cuba was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds therefore represented a debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of nationalization of the properties of the Consolidated Railroads of Cuba, claimant suffered a loss in connection with his bonds within the meaning of Title V of the Act. (See Claim of Edward R. Smith, Claim No. CU-5001.)

Information available to the Commission establishes that the last payment of interest on the subject debentures was made on April 1, 1959; however, the nationalized enterprise owed, as of that date, a total of 14.3% of the face amount of the debenture issued for prior accumulation of unpaid interest. Claimant, therefore, sustained the loss of the face amount of his bonds, the 14.3% prior accumulation of interest, and interest at 3% per annum from April 1, 1959 to October 13, 1960, the date upon which the enterprise was nationalized by the Government of Cuba.

As to the dollar value of the bond and interest, expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the date of loss.

The Commission further finds that the amount of the unpaid indebtedness on claimant's Consolidated Railroads of Cuba bonds on October 13, 1960, the date of loss, was \$21,403.44 including the principal amount of \$18,000.00 and the interest due, to and including October 13, 1960, in the amount of \$3,403.00.

Concerning the bonds issued by the Cuba Railroad Company, the Commission finds that claimant is and since prior to October 13, 1960, has been the owner of the following bonds of the Cuban Railroad Company:

1. Nine bonds in the original face amount of \$1,000.00 each, known as First Mortgage Gold Bonds, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton

Trust Company of New York as Trustee). The bonds in question are Nos. 11863, 12289, 12293, 12300, 12302, 12307, 12308, 12309, and 12313 with attached interest coupons Nos. 14 through 36, due on and after July 1, 1959. Pursuant to the Supplemental Indenture of July 1, 1952, each bond is overstamped to set forth an outstanding principal balance of \$460.00 each, and to provide total annual interest of \$18.40, or 4% of the outstanding principal balance; and

2. One bond in the original face amount of \$1,000.00 and known as "First Lien and Refunding Bond, Series A, 4%, due June 30, 1970", issued under an Indenture of March 10, 1922 and a Supplemental Indenture dated July 1, 1952 with the First National City Bank of New York as Successor Trustee. The bond in question is numbered M1714. The Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were re-issued 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 Cuba Railroad Company, incorporated in the State of New Jersey, was wholly-owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act (supra).

The record shows that the properties of the Cuban Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represent debts which were a charge on property which has been nationalized by the Government of Cuba as defined in Section 502(3) of the Act (supra).

The Commission finds therefore that, as a result of the nationalization of the properties of the Cuba Railroad Company, claimant suffered a loss in connection with its bonds within the meaning of Title V of the Act.

With regard to the value of these bonds on the date of loss, information available to the Commission discloses the following: That no part of the outstanding principal balance was ever paid on the First Mortgage Gold Bonds due June 30, 1970 and that the last payment of interest was made on January 1, 1959; and that the last payment of interest on the First Lien and Refunding Bond, Series A was made on December 1, 1958.

The Commission thus finds the amount of the unpaid indebtedness on claimant's Cuba Railroad Company bonds as follows:

1. On the nine First Mortgage Gold Bonds due June 30, 1970, on October 13, 1960, the date of loss, was \$4,435.74 including the principal amount of \$4,140.00, and interest due on the bonds in the amount of \$295.74; and
2. On the First Lien and Refunding Bonds, Series A, due June 30, 1970, was \$682.56 including the principal amount of \$635.00 and the interest due on the bond from December 1, 1958 through October 13, 1960, the date of loss, in the amount of \$47.56.

The Commission concludes that the total amount of the unpaid indebtedness on all claimant's bonds was \$26,521.74 including the principal amounts of \$22,775.00 and the interest due on all bonds, as of October 13, 1960, the date of loss, in the total amount of \$3,746.74.

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 ELIAS GINNACOULIS 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 Twenty-Six Thousand Five Hundred Twenty-One Dollars and Seventy-Four Cents (\$26,521.74) 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 Proposed
Decision of the Commission

APR 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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

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).)