

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

IN THE MATTER OF THE CLAIM OF

ROBERT RALPH PRONGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4978

Decision No. CU-1201

AMENDED PROPOSED DECISION

By its Proposed Decision dated February 7, 1968, the Commission denied this claim for the reason that claimant had not met the burden of proof in that he had failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

Subsequently, claimant submitted additional evidence in support of this claim. Full consideration having been given to the entire record in this claim it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$272.02 was presented by ROBERT RALPH PRONGER, and is based on his interest in a bond issued by the Consolidated Railroads of Cuba. Claimant has been a national of the United States since his 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.

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 one bond in the original face amount of 500 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 bond in question is No. RD 112.

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 bond 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 bond 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 debenture 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 bond, 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 bond on October 13, 1960, the date of loss, was \$594.54 including the principal amount of \$500.00 and the interest due, to and including October 13, 1960, in the amount of \$94.54.

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 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.

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.

CERTIFICATION OF LOSS

The Commission certifies that ROBERT RALPH PRONGER 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 Five Hundred Ninety-Four Dollars and Fifty-Four Cents (\$594.54) 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

8 MAY 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: The above listed bond may have been returned to claimant and no payment should be made until it is 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).)

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Under the International Claims Settlement
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Claim No. CU-4978

Decision No. CU 1201

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 \$272.02 was presented by ROBERT R. PRONGER based upon the asserted loss of bond interests in the Consolidated Railroad Company of Cuba. Claimant asserts that he is a national of the United States.

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)]⁷, 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:

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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).)

Claimant asserts the ownership of a debenture issued by Consolidated Railroads of Cuba, and submitted the original security forming the basis of this claim, to wit: one Consolidated Railroads of Cuba 3% Cumulative Debenture for 500 pesos, No. RD 112, in the name of ROBERT R. PRONGER. The date this security was issued was not shown. By Commission letter of September 27, 1967, claimant was advised as to the type of additional evidence proper for submission to establish his claim under the Act. Claimant subsequently replied requesting the aforementioned security be returned to him. By letter of October 20, 1967 the claimant was advised that a favorable recommendation could not be made to the Commission in the absence of this certificate. The certificate was returned to him on the same date.

The Regulations of the Commission provide, in part:

"If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents..." (FCSC Reg., 45 C.F.R. §531.3(a) (Supp. 1967).)

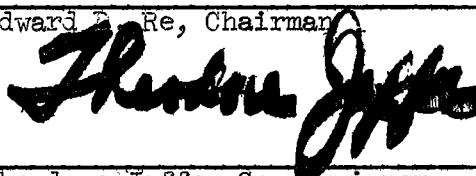
Inasmuch as the original security forming the basis of this claim has been returned to the claimant and additional evidence in support of this claim, as suggested by the Commission's letter of September 27, 1967, has not been received, the Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

FEB 7 1968



Edward A. Re, Chairman



Theodore Jaffe, Commissioner

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CU-4978