

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

IN THE MATTER OF THE CLAIM OF

JACK F. COGAN

Claim No. **CU-4999**

Decision No. **CU -1019**

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

In the Proposed Decision issued January 24, 1968 the Commission denied this claim for failure of proof. The decision was entered as final on February 27, 1968. Claimant has since submitted additional evidence and upon consideration of this matter, it is

ORDERED that the Final Decision be and it is hereby set aside and the Proposed Decision be and it is amended.

In our decision entitled the Claim of Edward R. Smith (Claim No. CU-5001 which we incorporate herein by reference), we held that the properties of the Consolidated Railroads of Cuba were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$1,000 3% Income Debenture as \$1,189.08 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Smith decision; that he was an American national at the requisite times; that he has been the owner of two 3% Income Debentures in the total face amount of \$2,000 since prior to October 13, 1960; and that he suffered a loss in the amount of \$2,378.16 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained 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 the settlement

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that JACK F. COGAN 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 Two Thousand Three Hundred Seventy-eight Dollars and Sixteen Cents (\$2,378.16) with interest 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

JAN 8 1969

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 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 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).)

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

IN THE MATTER OF THE CLAIM OF

JACK F. COGAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4999

Decision No. CU 1019

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in an unspecified amount was presented by JACK F. COGAN, and is based on his asserted interest in bonds 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.

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 states that he is the owner of two bonds issued by the Consolidated Railroads of Cuba. Claimant has submitted bonds numbered RM20078 and RM20079 in the original face amount of 1,000 pesos each issued by the Consolidated Railroads of Cuba and known as a 3% Cumulative Income Debenture. The bonds reflect that they were issued to Josephthal & Co. on April 1, 1960. Claimant has also submitted two broker's confirmations which reflect that one William H. McKinley purchased Consolidated Railroads of Cuba 3% Cumulative Income Debentures on June 6, 1960 and on June 22, 1960.

By Commission letter of November 28, 1967, claimant was advised of the aforesaid facts, and he was further advised as to the type of additional evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

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. 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 S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 27 1968

Francis Macfarlane
Clerk of the Commission

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).)