

#P-17

Debts of Nat. Cuban Corp.

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

IN THE MATTER OF THE CLAIM OF

KRAMER, MARX, GREENLEE & BACKUS

Claim No. CU -0105

Decision No. CU-26

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$113,180.00, plus interest, was presented by the partnership of KRAMER, MARX, GREENLEE & BACKUS, based upon debts assertedly due from enterprises nationalized by the Government of Cuba. The members of the partnership have been citizens of the United States at all times pertinent to this claim.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

- (a) . . . 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.

The claim is based on legal services rendered and is presented in two parts. The first part concerns the asserted debt of \$103,945.97, with interest, of The Cuba Railroad Company and its affiliated companies; and the second part concerns the asserted debt of \$9,234.03, with interest, of the Compania Cubana.

Part I

Claimant contends and the record shows that the partnership performed services for, made disbursements on behalf of, and was retained by The Cuba Railroad Company through October 15, 1960, for sums in the total principal amount of \$103,945.97.

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 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 . . . .

Consolidated Railroads of Cuba also owned Cuba Northern Railways



Company (Ferrocarriles Del Norte de Cuba) a Cuban corporation. The latter in turn owned a large part of Guantanamo & Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. It appears that The Cuba Railroad Company made arrangements with its related companies for contribution of amounts owing by The Cuba Railroad Company to the claimant to the extent The Cuba Railroad Company deemed such payments to be for services in which one or more of the companies had an interest. However, all four companies were listed as nationalized by Law 890, published in the Cuban Official Gazette on October 13, 1960. The Cuban Administrator of the Consolidated Railroads of Cuba dispensed with the services of claimant as of October 15, 1960.

Claimant presented bills to The Cuba Railroad Company in varying amounts on July 20, 1959, January 6, 1960, on November 15, 1960 for September 30, 1960, and monthly retainer bills for the period January 1, 1960 to October 15, 1960. Claimant now asks 6 per cent interest on each item from the aforesaid dates. The Cuba Railroad, by its President, and its legal counsel in Cuba, in separate letters of April 30, 1961, acknowledged that \$103,945.97 was due the claimant for services and disbursements. However, nothing of record shows that interest was due to claimant from The Cuba Railroad Company on the individual items of that part of its claim. Accordingly, it is concluded that claimant suffered a loss in the amount of \$103,945.97 within the meaning of Title V of the Act as a result of the nationalization of the property of The Cuba Railroad Company by the Government of Cuba on October 13, 1960.

#### Part II

Claimant contends that \$9,234.03 was due it from the Compania Cubana, a Cuban corporation. The record reflects that a company known as The Cuba Company, incorporated in New Jersey, was the owner of the Compania Cubana. The Cuba Company was dissolved as of August 20, 1959 and the stock of the Compania Cubana was distributed to the former stockholders of The Cuba

Company. Thus, although Compania Cubana may have been American owned in large part, as a corporation organized in Cuba, it did not qualify as a national of the United States under Section 502(1) of the Act (supra).

The record shows that the Compania Cubana had been billed by the claimant in varying amounts, totalling \$9,234.03, for services and disbursements, on October 8, 1959, December 31, 1959, June 30, 1960 and for services from January 1, 1960 to September 30, 1960, the latter item having been performed prior to action taken by the Government of Cuba against Compania Cubana. Compania Cubana was nationalized by the Government of Cuba by Resolution 1 of August 6, 1960 (pursuant to Law 851, Official Gazette, July 7, 1960).

Claimant now asks 6 per cent interest on each item so billed to the Compania Cubana, from the dates of billing. The President of Compania Cubana, by letter of August 15, 1962, acknowledged the bill in the total of \$9,234.03. However, nothing of record shows that interest was due to claimant from the Compania Cubana on the individual items of that part of its claim. Accordingly, it is concluded that claimant suffered a loss in the amount of \$9,234.03 within the meaning of Title V of the Act as a result of the nationalization of Compania Cubana by the Government of Cuba as of August 6, 1960.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$103,945.97 from October 13, 1960 and on



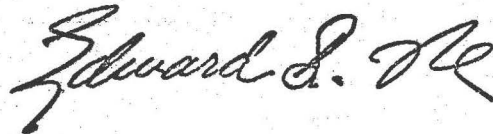
\$9,234.03 from August 6, 1960, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

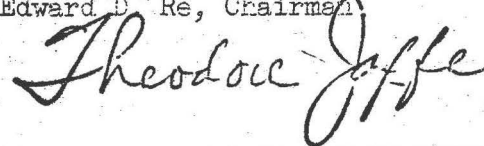
The Commission certifies that KRAMER, MARX, GREENLEE & BACKUS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thirteen Thousand One Hundred Eighty Dollars (\$113,180.00) with interest thereon 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.

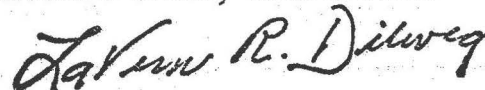
7 DEC 1966



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))