

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

IN THE MATTER OF THE CLAIM OF

THOMAS HUNTINGDON BERRY  
ELLEN McCLUNG BERRY

Claim No. CU - 0524

Decision No. CU - 3285

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Elliott D. Adams, Esq.,

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THOMAS HUNTINGDON BERRY and ELLEN McCLUNG BERRY in the amount of \$12,962.15, plus accrued interest, and is based upon the asserted ownership and loss of three parcels of land, a house, and household furnishings on the Isle of Pines, Cuba and attorney's fees. Claimants have been nationals of the United States since 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.

Claimants contend that they lost their interests in land and improvements and certain personal property located on said property valued at \$11,783.77. The record contains a copy of Escritura No. 33 for the sale of 20 acres of land, a copy of Escritura No. 66 for the sale of Lot #2, Block 33, Reparto Brazo Fuerte, Isle of Pines, a copy of a receipt for the payment in full for Lot #1, Block 33, Reparto Brazo Fuerte, Isle of Pines, cancelled checks, receipts, delivery slips and a report furnished to the Commission from sources within Cuba.

On the basis of the evidence of record, the Commission finds that claimants, THOMAS HUNTINGDON BERRY and ELLEN McCLUNG BERRY, were the owners of a 20 acre plot of Cuchilla Alta, Lots #1 and #2 of Block 33, Reparto Fuerte, Isle of Pines, Cuba, with the improvements and certain personal property located on these premises.

Claimants assert that their property was taken by the Government of Cuba on February 18, 1961 as a result of actions taken by the military authorities on the Isle of Pines, Cuba. This assertion is based upon information received from a caretaker of the claimed property who reported to the claimants on the action of the military authorities in occupying the premises.

On the basis of the evidence of record, and in the absence of contrary evidence, the Commission finds that claimants suffered the loss of their real and personal property on the Isle of Pines on February 18, 1961.

CU-0524

As evidence of the value of the property thus taken, claimants have submitted cancelled checks for the sums spent in building the improvements on the land and for the furnishings therein, copies of purchase agreements for the purchase of two of the land parcels and a receipt acknowledging payment in full for the third parcel.

On the basis of the foregoing evidence, the Commission finds that the total loss sustained by claimants on February 18, 1961 amounted to \$11,783.77 based on the following values:

20 acre plot	\$ 2,500.00
Lot #1, Block 33	999.00
Lot #2, Block 33	849.00
Improvements	5,491.59
Household furnishings	<u>1,944.18</u>
Total	\$11,783.77

Accordingly, it is concluded that claimants suffered a loss, in the total amount of \$11,783.77, within the meaning of Title V of the Act, as a result of the actions of the Government of Cuba.

The Commission has decided that in certification of loss 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

A portion of this claim in the amount of \$1,178.38 is based upon attorneys fees. No specific provisions is made in the statute for the inclusion in the certification of loss of attorneys fees, only to the amount of fees allowed attorneys based upon the amount of the certification of loss. After consideration of the statute and the legislative history of the Act, the Commission finds that attorneys fees were not intended by Congress to constitute a loss resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of nationals of the United States by the Government of Cuba within the meaning of Section 502(3) of the Act. Accordingly, this portion of the claim is denied.

CERTIFICATION OF LOSS

The Commission certifies that THOMAS HUNTINGDON BERRY and ELLEN McCLUNG BERRY, 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 Eleven Thousand Seven Hundred Eighty-Three Dollars and Seventy-Seven Cents (\$11,783.77) with interest at 6% per annum from February 18, 1961 to the date of settlement.

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

NOV 6 1968

*Kenneth v. B. Sutton*

Kenneth v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney E. Goldberg*

Sidney E. Goldberg, Commissioner

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).)

CU-0524