

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

IN THE MATTER OF THE CLAIM OF

JAMES W. ROWELL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0876

Decision No. CU-1801

Counsel for claimant:

Whisnant & Lackey
By N. Dixon Lackey, Jr., Esq.
and
Jules R. Israel, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision of May 1, 1968, the Commission denied this claim for failure of proof.

Claimant has since submitted additional evidence including the statement of Jose Pernas and Enrique Rodriguez, affidavit of the claimant executed August 15, 1968, and list of items involved in the claim.

The Commission now finds, on the basis of evidence of record, that claimant owned a 1939 Prowler inboard motor boat which, in the absence of evidence to the contrary, was taken by the Government of Cuba on October 25, 1965.

In arriving at the value of the claimant's loss the Commission has considered the claimant's description, and the itemization of the work done and the parts acquired subsequent to the date of purchase.

The Commission, after giving full consideration to the evidence of record, finds that the boat, including its equipment at the time of loss had a value of \$3,725.00. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$3,725.00, within the meaning of Title V of the Act.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and it is so ordered.

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

CERTIFICATION OF LOSS

The Commission certifies that JAMES W. ROWELL 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 Three Thousand Seven Hundred Twenty-five Dollars (\$3,725.00) with interest thereon at 6% per annum from October 25, 1965 to the date of settlement.

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

OCT 9 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feinberg
Sidney Feinberg, 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 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].)

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Counsel for Claimant:

Jules R. Israel, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$5,500.00, was presented by JAMES W. ROWELL, and is based upon the asserted loss of a 26 foot boat. 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)]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:

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 asserts the ownership and loss of a 26 foot power boat, and states that it was "appropriated by the Cuban Militia" on or about October 25, 1965. He estimates the value of the boat at \$5,500.00.

In support of this claim, filed on November 14, 1966, claimant submitted only his own statements as set forth in the claim form. Accordingly, by Commission letter of November 16, 1966, suggestions were made to claimant, through counsel, as to the type of evidence proper for submission in order to establish a compensable claim. Specifically, claimant was advised as to the necessity of establishing ownership of property; a nationalization or other taking of said property by the Government of Cuba; and the value of property on the date of loss. In reply to the Commission's suggestions, claimant submitted evidence of his birth, and a photocopy of a Florida boat registration for a 22 foot boat, dated August 4, 1965.

Subsequently, by Commission letter of February 9, 1968, it was again suggested to claimant, through counsel, that he submit evidence to establish the loss of his boat as a result of expropriatory measures by the Government of Cuba, and the value of the boat on the date of loss. Claimant was advised, through counsel, that such additional evidence should be submitted within 45 days from the Commission's letter of February 9, 1968. However, no further evidence was submitted; neither have claimant nor counsel corresponded with the Commission.

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; neither has he established the value of subject property on the date of any action by the Government of Cuba. Accordingly, this claim 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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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-0876