

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

IN THE MATTER OF THE CLAIM OF

JAMES RICH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0992

Decision No. CU 3287

Counsel for claimant:

Freedman, Borowsky & Lorry
By Barton Allen Pasternak, Esq.

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 \$85,517.61, plus interest, was presented by JAMES RICH, being the amount of a judgment against the Republic of Cuba. Claimant has been a national 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.

Claimant contends that the claim arose from negligence of Naviera Vacuba, S.A., a company subsequently nationalized by the Republic of Cuba, and that a judgment against the company was converted to a judgment against the Republic of Cuba.

It appears from the record that claimant, on or about January 11, 1960, was employed by Jarka Corporation of Philadelphia, Pennsylvania, as a long-shoreman. At that time Jarka Corporation was employed in discharging a cargo from the SS "Bahia de Matanzas". Claimant has contended that on January 11, 1960, while performing his duties in connection with discharging the aforesaid cargo, and because of unsafe conditions of the ship, he sustained injuries. Suit was filed June 17, 1960 against Naviera. On June 7, 1961, after a trial before judge and jury (U.S. District Court for the Eastern District of Pennsylvania, Civil Action No. 27708), judgment in the amount of \$80,517.61 was entered in favor of the plaintiff against Naviera.

The SS "Bahia de Matanzas" belonged to the Government of Cuba and had been leased to Naviera Vacuba, S.A. The lease was terminated by Law 841, July 5, 1960 (Cuban Official Gazette). The record further discloses that Naviera Vacuba, S.A., was confiscated by the Government of Cuba on August 26, 1960, by publication in the Cuban Official Gazette, pursuant to Cuban Law 715.

On August 1, 1961, complaint was filed against the Republic of Cuba, the defendant having been served by serving the Secretary of the Commonwealth, pursuant to 15 P.S. 1342, by the United States Marshal. In connection with the fact that this claimant actually sued the Government of Cuba, this Commission knows that under ordinary conditions, the courts of the United States

would not entertain an action against a foreign government and under the act of state doctrine the courts of one country usually will not sit in judgment on the acts of the government of another, done within its own territory. In the instant claim, however, claimant's action against the Republic of Cuba resulting from its nationalization of Naviera Vacuba, S.A. would be permitted, in the opinion of the Commission, by the Hickenlooper amendment to the Foreign Assistance Act of 1964, 22 U.S.C. §2370(e)(2), Supplement 1967. The amendment provided that notwithstanding any other provision of law, no court in the United States shall decline on account of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959. Here the judgment against Naviera Vacuba, S.A., was later converted into a judgment against the Republic of Cuba on February 10, 1964. The record contains a certified copy of this Judgment against the Republic of Cuba, for \$80,517.61, with interest at 6% from June 7, 1961.

Inasmuch as the debt of the Government of Cuba has not been paid, the Commission finds that claimant has suffered a loss within the scope of Title V of the Act, in the amount of \$80,517.61, as of June 7, 1961. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

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

CERTIFICATION OF LOSS

The Commission certifies that JAMES RICH 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 Eighty Thousand Five Hundred Seventeen Dollars and Sixty-One Cents (\$80,517.61) with interest at 6% per annum from June 7, 1961 to the date of settlement.

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

NOV 6 1968

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, 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).)