

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

IN THE MATTER OF THE CLAIM OF

GAETANO BAIERA  
CATHERINE BAIERA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2467  
CU-2468

Decision No. CU -2032

AMENDED PROPOSED DECISION

By Proposed Decision dated June 26, 1968, the Commission denied these claims for failure of proof.

Subsequently, claimants submitted additional evidence in support of these claims. Full consideration having been given to the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

Claimants, GAETANO BAIERA and CATHERINE BAIERA, who owned a participation interest in the Cuban Venezuelan Oil Voting Trust, assert claims under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Trust.

In our decision entitled the Claim of Felix Heyman (Claim No. CU-0412, which we incorporate herein by reference), we held that the properties owned or controlled by the Trust were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, 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 unit of \$0.11971.

On the basis of evidence in the record in the instant case, the Commission finds that these claimants come within the terms of the Heyman decision; that they were American nationals at the requisite times; that

they have been the owners of 100 units of participation in the Cuban Venezuelan Oil Voting Trust since prior to November 23, 1959; and that they suffered a loss in the amount of \$11.97 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 November 23, 1959, the date of loss, to the date on which provisions are made for the settlement thereof, and it is so ordered. (See Heyman, supra.)

CERTIFICATION OF LOSS

The Commission certifies that GAETANO BAIERA and CATHERINE BAIERA 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 Dollars and Ninety-seven Cents (\$11.97) with interest at 6% per annum from November 23, 1959 to the date of settlement.

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

SEP 25 1968

*Leonard v. B. Sutton*  
\_\_\_\_\_  
Leonard v. P. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
\_\_\_\_\_  
Sidney Freidberg, 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 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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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 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 claimants establish retention of the securities for the loss here certified.

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PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$200.00, were presented by GAETANO BAIERA and CATHERINE BAIERA, and are based upon the asserted loss of shareholder interests in "Cuban Venezuelan Oil Company". Claimants state that they have been nationals of the United States since their 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).)

Claimants assert the loss of 200 shares of "Cuban Venezuelan Oil" and claim a total loss of \$200.00. No evidence has been submitted in support of these claims, filed on April 23, 1967.

By Commission letters of July 5, 1967, claimants were advised as to the type of evidence proper for submission to establish these claims under the Act. Specifically, it was suggested that claimants submit the original stock certificates and evidence of date of purchase and price paid, as well as proof of their United States nationality. No evidence in response to this correspondence has been received to date.

By letters of February 28, 1968 and March 13, 1968, claimants were invited to submit any evidence available to them within 30 days from those dates, and they were informed that, absent such evidence, it might become necessary to determine the claims on the basis of the existing record. No evidence has since been submitted.

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The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these claims are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of these claims.

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

26 JUN 1968

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

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
Sidney Freidberg, Commissioner

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