

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

IN THE MATTER OF THE CLAIM OF

NICHOLAS A. SCHILLEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2739

Decision No. CU
3984

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 NICHOLAS A. SCHILLEN, for \$50,796.19, based upon the asserted loss of a cattle ranch and a bank account in Cuba. Claimant has been a national of the United States since his naturalization on June 3, 1940.

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.

Real Property

Claimant contends that his 1,800 acre ranch, including improvements thereon, valued at \$42,868.18, located in Florida, Province of Camaguey, Cuba, was taken on October 16, 1959.

The record includes claimant's letter dated July 3, 1960 to the United States Embassy in Havana in which he states that he and his wife purchased the ranch in 1955. The record also contains a location map of the ranch; a photostat of the purchase document reflecting his purchase of the ranch, in three lots as asserted; affidavits from his former secretary, a former business associate, and from his attorney in Cuba concerning his ownership.

Based on the foregoing and the evidence of record, the Commission finds that claimant purchased and improved the cattle ranch in question. Under the Community Property Law of Cuba, his wife had a one-half interest therein.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

Article 31 of the Agrarian Reform Law provided that indemnity should be paid in redeemable bonds; and set out that to that end an issue of Republic of Cuba bonds should be floated in such amount, and under such terms and conditions, as might be fixed in due time, the bonds to be called "Agrarian Reform Bonds" and to be considered public securities. Claimant avers that no compensation of any kind has been received with respect to the expropriation of said real estate and that there are no credits or off-sets to this claim. The Commission finds that the improved cattle ranch belonging to claimant and his wife was taken by the Government of Cuba on October 16, 1959, pursuant to the provisions of the Agrarian Reform Law.

Since claimant states that his wife, Maria M. Schillen, did not become a national of the United States until May 22, 1968, she was not a national of the United States on the date of loss. The Commission therefore finds that claim based on her one-half interest in the cattle ranch is not within the scope of Title V of the Act. In view of the above, the Commission holds that claim based thereon must be and hereby is denied.

The record contains an itemized list of the expenditures made in connection with the purchase of the ranch and the improvements that were made thereon; and an investment statement prepared by a public accountant in Indianapolis, Indiana, based upon the claimant's records which reflects the value of the ranch and improvements as \$40,382.61, and the Commission finds the value of \$40,382.61 fair and reasonable.

The Commission concludes that claimant sustained a loss for his one-half interest in the ranch in the amount of \$20,191.30 within the meaning of Title V of the Act.

Bank Account

Claimant also contends that he lost a bank account in Cuba having a balance of 7,928.01 pesos. The record establishes that claimant's wife had a balance of 7,970.72 pesos on deposit with the Bank of Nova Scotia, Havana, Cuba, on July 29, 1960. The Commission finds that in accordance with the Community Property Law of Cuba, claimant owned a one-half interest in this bank account.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these enactments and resolutions affect the account of the claimant in Claim No. CU-2739.

Law 568, published in the Cuban Official Gazette on September 29, 1959 forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However,

Laws 963 and 964 do not affect Claim No. CU-2739 in which the account did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. From the foregoing, the Commission finds that the above-described bank account, totalling 7,970.72 pesos was taken by the Government of Cuba on December 6, 1961, the peso being on a par with the dollar. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Further, the Commission finds that on December 6, 1961, claimant suffered a loss of his one-half interest in this bank account within the meaning of Title V of the Act, as the result of the taking of the bank account by the Government of Cuba as of December 6, 1961.

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, as follows:

<u>FROM</u>	<u>ON</u>
October 16, 1959	\$20,191.30
December 6, 1961	<u>3,985.36</u>
	\$24,176.66

CERTIFICATION OF LOSS

The Commission certifies that NICHOLAS A. SCHILLEN 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 Twenty-four Thousand One Hundred Seventy-six Dollars and Sixty-six Cents (\$24,176.66) with interest thereon at 6% per annum from the aforesaid dates of taking to the date of settlement.

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

OCT 8 1969

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).)