

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

IN THE MATTER OF THE CLAIM OF

GEORGE P. SCHMIELER

and

CAROLYN K. SCHMIELER

Claim No. CU-2747

Decision No. CU-3947

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Jeffrey R. Schmieler, Esq.

ORDER AND AMENDED PROPOSED DECISION

By Proposed Decision dated October 1, 1969, the Commission certified a loss to GEORGE P. SCHMIELER in the amount of \$6,455.00 for his one-half interest in real and personal property taken by Cuba.

Therafter additional evidence was received in this claim and the record now establishes that his wife, CAROLYN K. SCHMIELER, the owner of the other half of the property in question is a national of the United States by birth. Accordingly, it is

ORDERED that the Proposed Decision be and the same is hereby amended to read as follows:

On the basis of the evidence of record, the Commission finds that claimant, CAROLYN K. SCHMIELER, has been a national of the United States since her birth in the United States.

The Commission further finds that claimant, CAROLYN K. SCHMIELER, is and since prior to May 1, 1959, has been the owner of a one-half interest in the property in question described in said Proposed Decision.

Accordingly the following additional certification of loss will be entered, and in all other respects the Proposed Decision is affirmed:

CERTIFICATION OF LOSS

The Commission certifies that CAROLYN K. SCHMIELER 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 Six Thousand Four Hundred Fifty-five Dollars (\$6,455.00) with interest at 6% per annum from May 1, 1959 to the date of settlement.

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

OCT 21 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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 claimant establishes retention of the securities for the loss here certified.

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).)

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Counsel for claimant:

Bell and Bell
by Jeffrey R. Schmieler, Esq.

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 \$18,618.38, was presented by GEORGE P. SCHMIELER and is based upon the asserted loss of real and personal property in 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.

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).)

Claim is based on an ownership interest in a cooperative apartment represented by a certificate for 30 shares and on ownership of personality therein, both of which it is asserted were intervened by the Cuban Government in 1959 or 1960.

In support of the claim, there was submitted a copy of a 1956 letter transmitting the share certificate covering ownership of the apartment, a copy of a 1956 letter to claimant and wife concerning rental of the apartment at \$100 per month; a copy of a 1956 receipt for \$1,300.00 for personality in the apartment; a letter of May 4, 1959 concerning intervention of the apartments in the building where claimant's apartment is located. Additionally, there was submitted a letter of July 30, 1958 in the Spanish language in which is seen the figure of \$17,318.38 which claimant asserts as the value of the apartment. A requested translation of this document has never been received.

On the basis of the record, the Commission finds that pursuant to the community property laws of Cuba claimant owned a one-half interest

in the property in question and that it was intervened by the Government of Cuba on May 1, 1959.

Based upon the evidence of record and evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that the value of the apartment was \$12,000.00 and that the value of the personalty after appropriate depreciation was \$910.00.

Accordingly, the Commission finds that claimant suffered a loss in the amount of \$6,455.00 within the meaning of Title V of the Act as a result of the taking of the property by the Government of Cuba on May 1, 1959.

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 GEORGE P. SCHMIELER 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 Six Thousand Four Hundred Fifty-Five Dollars (\$6,455.00) with interest at 6% per annum from May 1, 1959 to the date of settlement.

Dated at Washington, D. C.
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Decision of the Commission

OCT 1 1969

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