

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

IN THE MATTER OF THE CLAIM OF

HARRY S. BRACKNEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3396

Decision No. CU 1777

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 \$150.00, was presented by HARRY S. BRACKNEY based upon the loss of a bank draft. 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)], 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.

The record reflects that claimant was employed in Cuba from January 1, 1959 until January 31, 1960. During that period, claimant purchased a bank draft drawn in his favor at the Nicaro branch of the Trust Company of Cuba. In compliance with the currency exchange laws and practices in force in Cuba at the time, claimant sought permission from the Banco Nacional de Cuba to forward the draft to the United States. In early August 1959, the transfer of funds was approved by the Monetary Stabilization Fund under Expediente N-2, Relacion SAP-459. The Trust Company of Cuba thereupon issued claimant a bank draft in the amount of \$150.00.

The record further shows that on August 4, 1959, claimant mailed the draft to the Florida National Bank and Trust Company of Miami, Florida. On August 20, 1959, claimant's Cuban attorney was called before a Special Judge, in Havana who, in the attorney's presence, opened claimant's letter of August 4, which had been removed from the mails by Cuban authorities, and removed the draft. Subsequently, the draft was sent to the Banco Nacional de Cuba in order to substantiate the asserted illegality of claimant's actions, and the draft was held by the Cuban authorities pending the outcome of an action instituted against claimant for attempting to transfer funds abroad. Claimant has been unable to recover either the draft or its cash equivalent.

The Commission finds that claimant's property was taken by action of the Government of Cuba, and that, in the absence of evidence to the contrary, the taking occurred on August 20, 1959, the date upon which the draft was found in possession of Cuban authorities.

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of a taking by the Government of Cuba and that, in the absence of evidence to the contrary, the loss on August 20, 1959 as to \$150.00.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that HARRY S. BRACKNEY 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 One Hundred Fifty Dollars (\$150.00) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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-3396

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.

CU-3396