

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

**IN THE MATTER OF THE CLAIM OF**

FIRST NATIONAL CITY BANK,  
EXECUTOR OF THE ESTATE OF  
EZRA J. BARKER, DECEASED

Claim No. **CU-0469**

Decision No. **CU-4707**

**Under the International Claims Settlement  
Act of 1949, as amended**

Counsel for claimant:

Angus M. Irvine, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated April 8, 1970, the Commission certified a loss to EZRA J. BARKER in the amount of \$13,620.16 for the loss of his personal property taken by Cuba.

Thereafter evidence was received in this claim and the record now establishes that EZRA J. BARKER died on August 30, 1967 and that FIRST NATIONAL CITY BANK, 399 Park Avenue, New York, New York was granted Letters Testamentary on his estate on November 27, 1967. Accordingly, it is

ORDERED that the Proposed Decision be and the same is hereby amended to reflect the substitution of the Executor as claimant.

The certification as restated below will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS


The Commission certifies that FIRST NATIONAL CITY BANK, EXECUTOR OF THE ESTATE OF EZRA J. BARKER, DECEASED, succeeded to and 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 Thirteen Thousand Six Hundred Twenty Dollars and Sixteen Cents (\$13,620.16) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

**MAY 27 1970**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
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 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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IN THE MATTER OF THE CLAIM OF

EZRA J. BARKER

Under the International Claims Settlement  
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Claim No. CU-0469

Decision No. CU 4707

Counsel for claimant:

Angus M. Irvine, Esq.

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 EZRA J. BARKER for \$25,940.31 based upon the asserted ownership and loss of certain 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.

Claimant describes his loss as follows:

3 Bank accounts with The First National City Bank of New York, Havana	\$18,440.31
2 Promissory notes of The Royal Bank of Canada, Havana	5,300.00
1 share Havana Biltmore Yacht and Country Club, Series A	<u>2,200.00</u>
	\$25,940.31

Based upon the entire record, including copies of statements of bank accounts with and letters from The First National City Bank of New York, copies of two checks drawn on The Royal Bank of Canada, dated August 19, 1960, made out to claimant's sister and endorsed to the order of claimant, a copy of a share certificate of the Havana Biltmore Yacht and Country Club, and an affidavit of claimant and of Alva B. Townshend, his sister, the Commission finds that claimant owned a one-half interest in the personal property in question. Pursuant to the community property law of Cuba, his wife, Frances K. Barker, owned the other one-half interest therein.

1. Bank Accounts

Law 989, published in the Official Gazette on December 6, 1961, in its terms effectively confiscated all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. From the foregoing, the Commission finds that claimant's above-described bank accounts, totalling 18,440.31 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, FCSC 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 in the total amount of \$9,220.16 (the peso being on a par with the United States dollar) within the meaning of Title V of the Act, as the result of the taking of his one-half interest in these bank accounts by the Government of Cuba as of December 6, 1961.

2. Two checks

Claimant's sister, Alva B. Townshend, a national of the United States by birth, states that she had 5,300.00 pesos belonging to claimant and on his instructions purchased the two negotiable instruments in question in August 1960 on his behalf from The Royal Bank of Canada. She further states that she endeavored to collect these funds from The Royal Bank of Canada and from its successor, The Banco Nacional de Cuba, but without success; and endorsed the instruments to the claimant. On the basis of the evidence, the Commission finds that the funds represented by these checks in the total amount of 5,300.00 pesos were taken by the Government of Cuba on December 6, 1961 pursuant to the aforementioned Law 989, and that as a result, claimant suffered a loss in the amount of \$2,650.00 for his one-half interest therein. (See Claim of Ana Maria Lopez Gutierrez, Claim No. CU-0197.)

Claimant states that he and his wife asserted an income tax deduction in the amount of \$18,440.31 in their 1960 return and \$2,200.00 in 1962.

3. Havana Biltmore Yacht and Country Club

The Commission has found that the Havana Biltmore Yacht and Country Club was intervened by the Government of Cuba on March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.) In that claim the Commission determined that the aggregate value of a membership interest in the Country Club and one share of stock in the Cuban corporation itself (Series A) on March 19, 1960, the date of loss, was \$3,500.00.

It is noted that the value asserted by claimant for a share of stock in this club was \$2,200.00. However, in determining the amount of loss, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$1,750.00 on March 19, 1960 within the meaning of Title V of the Act, as a result of the taking of his one-half interest in the share of stock in this Country Club, by the Government of Cuba.

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
3 Bank Accounts	\$ 9,220.16
2 Checks	2,650.00
1 Share Havana Biltmore Yacht and Country Club	<u>1,750.00</u>
	\$13,620.16

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>
March 19, 1960	\$ 1,750.00
December 6, 1961	<u>11,870.16</u>
	\$13,620.16


CERTIFICATION OF LOSS


The Commission certifies that EZRA J. BARKER 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 Thirteen Thousand Six Hundred Twenty Dollars and Sixteen Cents (\$13,620.16) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

**8 APR 1970**

  
Lyda S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

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