

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

IN THE MATTER OF THE CLAIM OF

JACK WILLYS BROWNE

Claim No. CU -0501

Decision No. CU -5044

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on July 1, 1970.
No hearing requested.

Hearing on the record held on September 15, 1971.

FINAL DECISION

Under date of July 1, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$89,000.00 plus interest. Portions of the claim for the loss of \$10,200.00 in cash, for the loss of a shark and a charter business, and for a disability were denied for lack of proof.

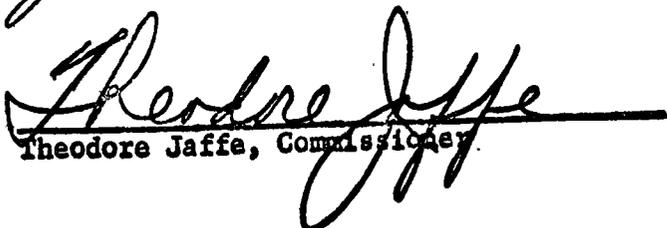
Claimant objected to the denial of the said portions of the claim, but submitted no new evidence in support of his objections.

Upon consideration of claimant's objections in light of the entire record, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of July 1, 1970 is affirmed in all respects.

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

SEP 15 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 JACK WILLYS BROWNE in the amended amount of \$255,900.00 based upon the asserted ownership and loss of a vessel; equipment; cash; for the loss of certain business profits; and for asserted injuries and disabilities resulting from actions of the Government of 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:

Vessel "Velma W"	\$ 70,000.00
Equipment aboard vessel	18,000.00
Cash aboard vessel	10,200.00
Loss of shark business under agreement	46,500.00
Loss of charter business	11,200.00
Disability resulting from imprisonment	<u>100,000.00</u>
	\$255,900.00

Based upon the entire record, including a copy of a Certificate of Enrollment and Yacht License issued by the United States Bureau of Customs on November 14, 1960, a Certificate of Ownership of Vessel issued by the United States Coast Guard on June 2, 1970, an insurance binder dated June 15, 1960, a Satisfaction of Mortgage of \$3,000.00 on the "Velma W" on June 2, 1970, and a detailed inventory list of the equipment on the "Velma W", the Commission finds that claimant owned the "Velma W" and the equipment on board.

The "Velma W" and Equipment Thereon

The record reflects that the "Velma W" left Key West, Florida on October 17, 1960 for Cuba for repairs in a Cuban Naval facility. Upon arrival on October 18, 1960 in Havana Harbor, the vessel was impounded by Cuban authorities. Claimant and a member of his crew were detained. On the following day they were arrested and held in prison without charges until October 31, 1960 when they were returned to the United States. Efforts by claimant, with the assistance of the United States Department of State, to secure the release of the vessel have been unsuccessful. Accordingly, the Commission finds that the "Velma W", and the equipment aboard, were taken by the Government of Cuba on October 18, 1960.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes, in support of the claimed values, the above-mentioned copy of a Certificate of Enrollment and Yacht License which describes the vessel as 79.3 feet long, 16 feet broad, oil screw, one deck, one mast, raked stem, and round stern; a photograph of the vessel, and letters from three individuals who knew the vessel who variously estimated the value of the "Velma W" as \$70,000.00, \$75,000.00, and between \$75,000.00 and \$80,000.00. The \$70,000.00 estimate was submitted by a yacht and ship broker who states he had examined the vessel prior to her seizure by the Cuban Government. The record also includes a detailed list of the equipment aboard the "Velma W" at the time of its seizure, including claimant's estimated prices of the separate items.

Based on the entire record including evidence available to the Commission, the Commission finds that the value of the "Velma W" was \$70,000.00 and the value of the equipment aboard the vessel was \$19,000.00, and that claimant suffered losses in these amounts within the scope of Title V of the Act by reason of the taking of his property by the Government of Cuba on October 18, 1960.

Loss of Cash on "Velma W"

Claimant states that he had \$10,200.00 in cash on board the "Velma W" to pay for the repairs in Cuba. He, however, has submitted no evidence to support this portion of his claim, either as to amount or that the money was taken by the Government of Cuba. Accordingly this portion of the claim is denied for failure of proof.

Shark Business

A portion of this claim is based on the loss of a shark business under agreement with Ocean Leather Corporation of New Jersey in the amount of \$46,500.00. A copy of this agreement has not been submitted, and claimant states with reference to supporting this item of his claim that there is no longer anyone available to substantiate anything. Accordingly, the Commission concludes that this portion of his claim must be and it is denied for failure of proof.

Charter Business

With regard to the asserted loss of the charter business of the "Velma W" in the amount of \$11,200.00, claimant has submitted a letter from John D. Craig Productions dated August 11, 1960 confirming an agreement with claimant for the charter of "Velma W" for 90 days for a consideration of \$9,000.00, with an option for additional time at a pro-rata price. The agreement expressly stipulated that the charter would start "immediately after Labor Day or on or about September 5, 1960", and also provided that claimant would be engaged as a diver and undersea photographer at a fee of \$2,276.00 with option for additional time at \$25.00 per day.

In the interim, however, the "Velma W" had been sunk in Florida on September 9 or 10, 1960 as a result of hurricane "Donna" and sustained damages which prompted claimant to take the vessel to Cuba for repairs. In a letter dated November 4, 1960, claimant stated that the trip from Key West to Havana was very slow due to bent propellers and the port propeller shaft being pulled apart during the trip. In this letter he also stated that the vessel itself was not a business, but was used for his hobby of treasure hunting and underwater picture taking, and that upon completing the repairs in Havana he had intended to go to the Bahamas to salvage a sport fishing boat he owned which was also sunk during the hurricane.

In view of the foregoing, it is clear that it was hurricane "Donna" and not the Government of Cuba which made it impossible for claimant to fulfill

his contract with John D. Craig Productions. Moreover, after October 18, 1960, the date of taking, the "Velma W" belonged to the Government of Cuba. Accordingly, the Commission concludes that this portion of this claim must also be denied.

Disability

Claimant states that his eyesight failed during his imprisonment in Cuba and that he suffered a heart attack following his release. He says he had chest pains, loss of reading vision, and a weak watering left eye, all of which, together with his heart condition, persists to the present time. He states that the doctor who treated him in Puerto Rico, Dr. Maximo Levin, attributed the heart attack to his imprisonment and that Dr. Levin would send a letter to the Commission confirming this opinion. Claimant believes the kind of food, the lack of food, and the medical treatment he received in prison were responsible for the disabilities he describes.

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

The Commission has held that in a claim under Section 503(b) of the Act, it must be established, inter alia, that the claimant suffered a disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

Although claimant has been requested many times to submit evidence to support this portion of his claim, none has been submitted. Moreover, it has not been asserted nor proved that there was a lack of due process or unusual or harsh treatment or that the disabilities resulted from Cuban action in violation of international law. Accordingly, the Commission concludes that this portion of the claim has not been established and it is therefore denied. (See Claim of Geraldine Isabella Shamma, a/k/a Geraldine I. Suarez, Claim No. CU-2593.)

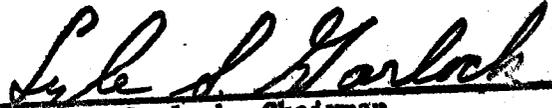
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

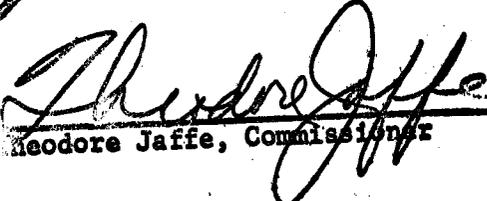
CERTIFICATION OF LOSS

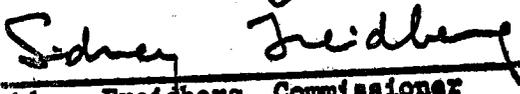
The Commission certifies that JACK WILLYS BROWNE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-nine Thousand Dollars (\$89,000.00) with interest thereon at 6% per annum from October 18, 1960 to the date of settlement.

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

JUL 1 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 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-0501