

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

IN THE MATTER OF THE CLAIM OF

LEONARD B. FOX, SR.  
and  
LEONARD B. FOX, JR.

Claim No. CU-1425  
Claim No. CU-0550

Decision No. CU - 6153

Under the International Claims Settlement  
Act of 1949, as amended

AMENDED PROPOSED DECISION

Under date of April 7, 1971, the Commission issued its Proposed Decision on these claims, certifying losses in favor of LEONARD B. FOX, SR. (Claim No. CU-1425) and LEONARD B. FOX, JR. (Claim No. CU-0550) in the amounts of \$56,821.16 and \$55,309.26, respectively, plus interest. Subsequently, LEONARD B. FOX, JR. filed objections only with respect to the value assigned to a 1955 automobile. No objections were filed by LEONARD B. FOX, SR.

The record shows that in 1955 Mr. FOX, Jr. acquired a 1/2 interest in a used 1955 Ford Thunderbird that had cost \$3,379.06. Upon depreciating the automobile at the applicable rate of 15% per year for 6 years, the Commission found that the value of the vehicle on February 7, 1961, the date of loss, was \$337.91. Mr. FOX, Jr. asserts that the vehicle had a much greater value, but is unable to submit evidence in support of his assertion.

Upon consideration of this matter, the Commission notes from other available information that at the time of loss the value of a 1955 Ford Thunderbird varied between \$1,480.00 and \$1,590.00. On the basis of the entire record, the Commission now finds that the automobile had a value of \$1,535.00 on February 7, 1961. Therefore, the value of the personal property herein, including the automobile, which was subject to the community property laws of Cuba, was \$12,059.93, rather than \$10,862.84 as found in the Proposed Decision; and the 1/2 interest therein of Mr. FOX, Jr. had a value of \$6,029.97.

The losses sustained by Mr. FOX, Jr. were, therefore, as follows:

Improved real property - inherited, not subject to community property laws of Cuba	\$46,888.17
Personal property - inherited, not subject to community property laws of Cuba	3,274.67
Personal property - subject to community laws of Cuba	<u>6,029.97</u>
Total	<u>\$56,192.81</u>

Accordingly, the Certification of Loss in the Proposed Decision in favor of LEONARD B. FOX, JR. is set aside and the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

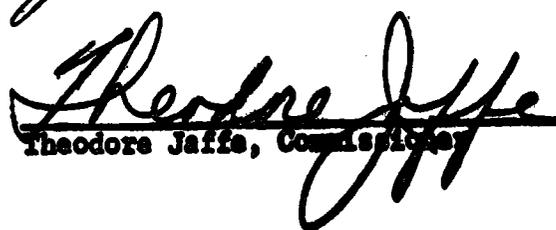
CERTIFICATION OF LOSS

The Commission certifies that LEONARD B. FOX, JR. 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 Fifty-Six Thousand One Hundred Ninety-Two Dollars and Eighty-One Cents (\$56,192.81) with interest thereon at 6% per annum from February 7, 1961 to the date of settlement.

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

**JUL 6 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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 (1970).)

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IN THE MATTER OF THE CLAIM OF

LEONARD B. FOX, SR.  
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Claim No. CU -1425  
Claim No. CU-0550

Decision No. CU

6153

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$106,984.00 and \$88,000.00, respectively, were presented by LEONARD B. FOX, SR. and LEONARD B. FOX, JR., based upon the asserted losses of certain real and personal property in Cuba. Claimants have been nationals 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.

Claimants assert the following losses:

LEONARD B. FOX, SR. - Claim No. CU-1425

Improved real property at Varadero Beach, Matanzas Province, Cuba	\$100,000.00
Personal property	<u>6,984.00</u>
Total	<u>\$106,984.00</u>

LEONARD B. FOX, JR. - Claim No. CU-0550

Improved real property at Varadero Beach, Matanzas Province, Cuba (deemed to be included as part of above \$100,000.00 valuation)	\$ 60,000.00
Personal property	25,000.00
Debt due from Cuba	<u>3,000.00</u>
Total	<u>\$ 88,000.00</u>

Improved Real Property

Claimants base their claims on interests in the same real property. The record includes a copy of a deed of conversion, dated July 1, 1957, which had been registered with the Cuban authorities in Cardenas, Matanzas, Cuba. That document indicates that Mr. Fox, Sr. and his wife, who died on May 5, 1958, jointly owned certain land with an area of 2,663 square meters in Varadero Beach, Matanzas, Cuba, pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) It further appears from that document that Mr. Fox, Sr. had been granted authority by the Cuban land officials to improve the land by the addition of structures. Subsequently, the structures were built on the land.

The evidence also includes claimants' statements to the Commission; Mr. Fox, Sr.'s statements to the State Department; and affidavits from persons who were familiar with the real property.

On the basis of the entire record, the Commission finds that Mr. Fox, Sr. and his wife each owned a 1/2 interest in certain land in Varadero Beach, Matanzas, Cuba, having an area of 2,663 square meters and improved by five cottages constructed of cedar and mahogany, and a 2-story building of stone and hardwood, including a garage, dining room and kitchen. Upon the death of Mrs. Fox, Sr., her 1/2 interest in the property was inherited by her son, Mr. Fox, Jr., subject to a life estate in 1/3 thereof in favor of Mr. Fox, Sr.

On the basis of a notice from the Urban Reform Authorities of Matanzas, Cuba, the Commission finds that the improved real property was taken by the Government of Cuba on February 7, 1961.

In a letter of September 21, 1961 to the State Department, Mr. Fox, Sr. stated that in 1958 he had been offered \$100,000.00 for the land and buildings. The record includes an affidavit of February 3, 1968 from an architect who is familiar with the property and owned property in the same area. Therein, he stated that the land alone was worth over \$125,000.00. Another person who has known Mr. Fox, Sr. for 20 years stated in an affidavit of February 15, 1968 that in his opinion the land had a value of \$97,000.00 and the improvements had a value of \$12,000.00.

Upon consideration of the entire record, the Commission finds that the amount claimed is fair and reasonable. Accordingly, the Commission finds that the improved real property had a value of \$100,000.00 on February 7, 1961, the date of loss. Therefore, a 1/2 interest in the property had a value of \$50,000.00, and the 1/6 interest therein which was encumbered by a life estate in favor of Mr. Fox, Sr. had a value of \$16,666.67. The record shows that Mr. Fox, Sr. was 78 years of age on the date of loss.

With respect to the values of life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the

United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person 78 years of age is valued at 18.671% of the estate. Since the encumbered property had a value of \$16,666.67, the value of the life estate was \$3,111.83. Therefore, the aggregate value of the interests owned by Mr. Fox, Sr. was \$53,111.83, and the aggregate value of the interests owned by Mr. Fox, Jr. (two-sixths and the remainder in one-sixth) was \$46,888.17.

#### Personal Property

The Commission finds that Mr. and Mrs. Fox, Sr. owned certain items of personal property which were maintained on the premises at Varadero Beach, Matanzas, Cuba. The Commission further finds the items of personal property were owned by both claimants in the same proportions as the improved real property, and that the personal property was taken by the Government of Cuba on February 7, 1961 when the real property was taken.

The evidence includes a detailed list of the items of personal property included in a letter of September 21, 1961 from Mr. Fox, Sr. to the State Department. It appears that in claiming the loss of that property under Title V of the Act, Mr. Fox, Sr. took into account appropriate depreciation.

On the basis of the entire record, the Commission finds that the asserted valuation is fair and reasonable. Accordingly, the Commission finds that the aggregate value of the items of personal property on February 7, 1961, the date of loss, was \$6,984.00. Therefore, the value of a 1/2 interest therein was \$3,492.00, and the value of a 1/6 interest therein which was encumbered by a life estate in favor of Mr. Fox, Sr. was \$1,164.00.

The value of the life estate being 18.671% of \$1,164.00, was \$217.33. Therefore, the aggregate value of the interests owned by Mr. Fox, Sr. was \$3,709.33, and the aggregate value of the interests owned by Mr. Fox, Jr. was \$3,274.67.

The Commission finds that Mr. Fox, Jr. and his wife jointly owned certain items of personal property also maintained on the premises at Varadero Beach, Matanzas, Cuba. The Commission further finds that said items of personal property were taken by the Government of Cuba on February 7, 1961 when the real property was taken.

On several occasions the Commission suggested that the claim of Mrs. Fox, Jr. may be considered by the Commission upon written request to join the claim, accompanied by proof of her United States nationality at all pertinent times. However, no such request has been filed and no proof of her United States nationality has been submitted. Accordingly, the Commission will consider in this proceeding only the one-half interest owned by Mr. Fox, Jr.

The evidence includes two detailed lists of the items of personal property in question. One list is part of a letter of September 29, 1961 from Mrs. Fox, Jr. to the State Department, which list aggregates \$17,072.00. The other list is part of an affidavit executed by Mr. Fox, Jr. on July 14, 1960 before a Notary Public in Florida, Camaguey Province, Cuba, which list aggregates \$21,198.00. Mr. Fox, Jr. states that his wife's list is part of his list, representing a loss of \$25,000.00.

Upon examination of the two lists certain discrepancies were apparent. On several occasions the Commission suggested the submission of appropriate evidence to establish the approximate dates of acquisition and the approximate costs of each item of personal property claimed. However, such evidence has not been submitted.

Upon consideration of the entire record and in the absence of more persuasive evidence, the Commission finds that the values of the items of personal property on February 7, 1961 were as follows:

CU-1425  
CU-0550

1955 Automobile, depreciated for 6 years at 15% per year - 10% of \$3,379.06	\$ 337.91
Clothing - as evaluated by Mrs. Fox, Jr.	500.00
(No amount is being allowed for luggage, or jewelry, which were not included in Mrs. Fox's list.)	
Sport equipment, depreciated for 2 years at 10% per year	1,142.40
Furniture, after appropriate depreciation	2,344.67
Electrical appliances including a record player, after appropriate deprecia- tion	1,494.53
Sterling silver - as evaluated by Mrs. Fox, Jr.	2,322.00
Silverplate wares, glassware, dishes, ceramics, miscellaneous utensils, and kitchen utensils, after appro- priate depreciation	910.00
Paintings and pictures - as evaluated by Mrs. Fox, Jr.	570.00
Vases, linens, and miscellaneous ornaments, depreciated	<u>1,241.33</u>
Total	<u>\$ 10,862.84</u>

Therefore, the value of the one-half interest owned by Mr. Fox, Jr. was \$5,431.42.

Balance of Claim No. CU-0550

Mr. Fox, Jr. also asserts a loss of \$3,000.00 representing two months' salary and travel allowances which were not received by him, but were returned to the Government of Cuba. Thus he claims a debt due from the Cuban Government in that amount. He further asserts that when his employer's properties in Cuba were taken by the Government of Cuba, he sustained the loss of his job and was compelled to leave Cuba. Finally, he asserts the loss of two pedigreed dogs, for which no amount is stated.

The Commission suggested the submission of appropriate supporting evidence in these respects on several occasions. However, no proof with respect to these portions of Mr. Fox, Jr.'s claim has been filed to date.

The Commission finds that Mr. Fox, Jr. has failed to sustain the burden of proof with respect to said portions of the claim in that the record does not establish that Mr. Fox, Jr. sustained the asserted losses as a result of Cuba's nationalization of his properties. Accordingly, these portions of Mr. Fox, Jr.'s claim are denied.

RECAPITULATION

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
<u>MR. FOX, SR. - Claim No. CU-1425</u>	
Improved real property	\$ 53,111.83
Personal property	<u>3,709.33</u>
Total	<u>\$ 56,821.16</u>
<u>MR. FOX, JR. - Claim No. CU-0550</u>	
Improved real property - inherited, not subject to community property laws of Cuba	\$ 46,888.17
Personal property - inherited, not subject to community property laws of Cuba	3,274.67
Personal property - subject to community laws of Cuba	<u>5,146.42</u>
Total	<u>\$ 55,309.26</u>

The Commission has decided that in certifications of loss 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.

CU-1425  
CU-0550

CERTIFICATIONS OF LOSS

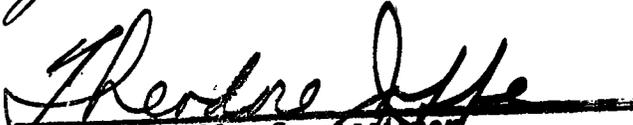
The Commission certifies that LEONARD B. FOX, SR. suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-six Thousand Eight Hundred Twenty-one Dollars and Sixteen Cents (\$56,821.16) with interest thereon at 6% per annum from February 7, 1961 to the date of settlement; and

The Commission certifies that LEONARD B. FOX, JR. 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 Fifty-five Thousand Three Hundred Nine Dollars and Twenty-six Cents (\$55,309.26) with interest thereon at 6% per annum from February 6, 1961 to the date of settlement.

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

APR 7 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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.

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