

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

IN THE MATTER OF THE CLAIM OF

ESTATE OF RUSSELL DANIEL LUKE,
DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2407

Decision No. CU 957

Counsel for Claimant:

John Henry Poole, Esq.

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 \$680.62, was presented by the ESTATE OF RUSSELL DANIEL LUKE, DECEASED, and is based upon the asserted loss of a debt owed to the deceased by the Government of Cuba.

The deceased RUSSELL DANIEL LUKE assertedly was a national of the United States since his birth; however, no evidence has been submitted to establish the decedent's nationality.

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).)

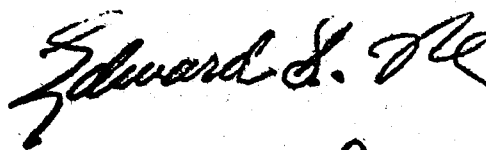
In this claim, filed on April 28, 1967, the decedent's son, Russell Daniel Luke, Jr., asserts that in October 1935 the decedent furnished provisions to crew members of two Cuban fishing vessels. It is further asserted that such provisions were furnished upon a promise by the Cuban Consul in Tampa, Florida, that the Government of Cuba would reimburse the decedent for the cost of the food provided; however, neither the decedent nor his Estate has received any payment from the Government of Cuba.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the loss occurred "...since January 1, 1959...", and prior to the date of filing a claim with the Commission. This claimant has not done; on the contrary, it is apparent that the loss occurred prior to January 1, 1959.

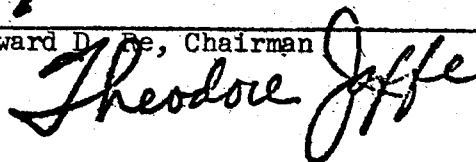
Accordingly, for the reason stated above, the Commission concludes that this claim is not one within the purview of the Act, (supra) and it is denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

JAN 17 1968



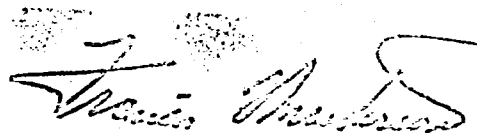
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on DEC 20 1967



Clerk of the Commission

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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