

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

IN THE MATTER OF THE CLAIM OF

LOWELL P. SCHWINGER  
DORIS BAILEY SCHWINGER

Claim No. CU-2657

Decision No. CU-705

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Shuttleworth & Ingersoll  
by T. M. Ingersoll, Esq.

FINAL DECISION

By Proposed Decision issued November 22, 1967, this claim in the amount of \$12,677.97 for the loss of real and personal property in Cuba and for any attorneys fees to which they were lawfully entitled was denied since claimants had not established their ownership or the value of property taken by the Government of Cuba and because attorneys fees were not included as a loss under Title V of the Act concerning losses resulting from the actions of the Government of Cuba.

Claimants objected to the denial of their claim for the real and personal property and submitted documentation including Internal Revenue reports concerning their Cuban losses.

On the basis of the new evidence, the Commission now finds that claimants were the owners of a house and lot in Nueva Gerona, Isle of Pines, Cuba, and two automobiles and a lawn mower located on the premises. The Commission further finds that these properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

In determining the value of the properties lost, the Commission has considered all the evidence of record and finds the values as follows:

House and land	\$11,429.97
Automobiles	1,150.00
Lawn Mower	<u>98.00</u>

\$12,677.97

Accordingly, the Commission concludes that claimants LOWELL P. SCHWINGER and DORIS BAILEY SCHWINGER suffered losses in the amounts of \$6,338.99 and \$6,338.98, respectively, as a result of actions of the Government of Cuba on December 6, 1961, within the meaning of Title V of the Act.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

Therefore the following Certifications of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that LOWELL P. SCHWINGER 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 Six Thousand Three Hundred Thirty-Eight Dollars and Ninety-Nine Cents (\$6,338.99) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that DORIS BAILEY SCHWINGER 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 Six Thousand Three Hundred Thirty-Eight Dollars and Ninety-Eight Cents (\$6,338.98) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

OCT 13 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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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$12,677.97, was presented by LOWELL P. SCHWINGER and DORIS BAILEY SCHWINGER, and is based upon the asserted loss of improvements, personalty, and for attorneys' fees. 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.

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 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).)

According to claimants' statements, they owned certain improved real property acquired prior to 1959, at Nueva Gerona, Isle of Pines, Cuba, two automobiles, and a lawn mower, which property was confiscated by the Government of Cuba in 1961. In addition, claimants assert a claim based on "any attorneys fees to which they are lawfully entitled." Other than statements by claimants, the record contains no evidence concerning ownership, loss or value of the real and personal property, subject of this claim.

By Commission letter of August 14, 1967, claimants were advised, through counsel, as to the type of evidence proper for submission to establish the instant claim under the Act. No evidence in response to this correspondence has been received to date. On September 19, 1967, counsel was invited to submit the suggested evidence within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. A copy of the foregoing letter was forwarded to the claimants. No evidence has since been submitted.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in

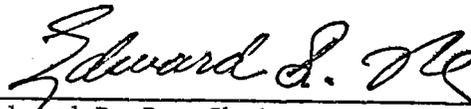
property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied.

It is noted further that, as regards the portion of this claim based on attorneys' fees, no specific provision is made in the Act for the inclusion, in any certification of loss, of expenses, including attorneys' fees, incurred by the claimant in the filing of said claim. The Commission has held that expenses incurred in the filing of a claim under Title V of the International Claims Settlement Act of 1949, as amended, were not intended by Congress to constitute a loss resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of United States nationals by the Government of Cuba, within the meaning of Section 502(3) of the Act. (See the Claim of Mary Pauline Seal, FCSC Claim No. CU-0059.) Accordingly, this portion of the claim based on attorneys' fees would not be compensable under the Act.

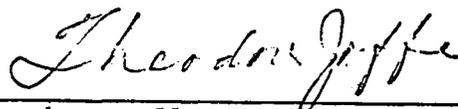
The Commission deems it unnecessary to make determinations with respect to other elements of the instant claim.

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

22 NOV 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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-2657