

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

IN THE MATTER OF THE CLAIM OF

EDWARD J. McCARTHY

Claim No. CU-3508

Decision No. CU 3119

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Lee, Toomey & Kent
BY: George P. Lamb, Esq., and
Micheal Mulrone, 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 EDWARD J. McCARTHY, and is based upon the asserted ownership and loss of personal property located in Cuba. Claimant has been a national of the United States since his birth in the United States.

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 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.

Section 502(1)(A) of the Act defines the term national of the United States to mean a natural person who is a citizen of the United States. The term does not include aliens.

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 asserts the ownership and loss of certain personal property, including a number of history books, which he values at \$2,000.00.

On the basis of the entire record and the state of Cuban law at the time of the transaction, the Commission finds that claimant was the owner of the subject personal property described above.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p.23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. As the record shows, claimant was not residing in Cuba at that time. The Commission finds, in the absence of evidence to the contrary, that the subject property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Based on the entire record the Commission finds that \$2,000.00. is a fair value for the personal property of claimant when it was taken by the Government of Cuba.

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 it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that EDWARD J. McCARTHY 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 Two Thousand Dollars (\$2,000.00) 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 Proposed
Decision of the Commission

SEP 25 1968

Leonard v. B. Aultman
Leonard v. B. Aultman, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feldberg
Sidney Feldberg, 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).)