

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

IN THE MATTER OF THE CLAIM OF

THEMIS R. GUTIERREZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3549

Decision No. CU 3903

Counsel for claimant:

Andrew P. Zimmer, Esq.

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 \$40,000.00, was presented by THEMIS R. GUTIERREZ and is based upon the asserted loss of an interest in improved real property in Santa Clara, 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.

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).)

Claimant has asserted a community interest in the asserted one-ninth share of her husband, George Gutierrez, in a sugar cane plantation, a portion of which she stated was leased permanently to a chemical industrial company manufacturing a product used to clean sugar cane vats used in the refining process, and a part leased permanently to a hydroelectric company which installed a small generating plant on the Sagua River, running by the property. She has also asserted an interest in the personal property involved.

By Commission letter of July 24, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. As no response was received, a "follow-up" letter was sent on August 31, 1967. Claimant then submitted a request for assistance in obtaining evidence as to the asserted losses. Appropriate steps were taken in this connection. By Commission letter of June 14, 1968, claimant was advised through counsel

that it was not certain the sought-for evidence would be received, and made additional suggestions concerning the submission of supporting evidence in this matter. Counsel by letter of August 13, 1968 requested an extension of time to September 15, 1968, which was granted. However, no further evidence has been received to date.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interest 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. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

SEP 24 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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].)