

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

IN THE MATTER OF THE CLAIM OF

HERBERT R. ELKER, EXECUTOR OF
THE ESTATE OF MILDRED S. ELKER,
DECEASED

Claim No. CU-8157

Decision No. CU 4070

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

Claimant, HERBERT R. ELKER, EXECUTOR OF THE ESTATE OF MILDRED S. ELKER, DECEASED, who owned a participation interest in the Cuban Venezuelan Oil Voting Trust, asserted a claim under Title V of the International Claims Settlement Act of 1949, as amended, on February 14, 1968 against the Government of Cuba because of its nationalization of said Trust.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967, (FCSC Reg., 45 C.F.R. See 513.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimants within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255,) It considers this to be such a claim.

In our decision entitled the Claim of Felix Heyman (Claim No. CU-0412 which we incorporate herein by reference), we held that the properties owned or controlled by the Trust were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per unit of \$0.11971.

On the basis of evidence in the record in the instant case, the Commission finds that the decedent, who died on December 3, 1966, and the beneficial owners of this claim came within the terms of the Heyman decision; that they were American nationals at the requisite times; that she had been the owner of 300 units of participation in the Cuban Venezuelan Oil Voting Trust since prior to November 23, 1959; and that she suffered a loss in the amount of \$35.91 within the meaning of Title V of the Act. Upon her death, her residual legatees succeeded to the loss. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from November 23, 1959, the date of loss, to the date on which provisions are made for the settlement thereof. (See Heyman, supra.)

CERTIFICATION OF LOSS

The Commission certifies that HERBERT R. ELKER, EXECUTOR OF THE ESTATE OF MILDRED S. ELKER, DECEASED 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 Thirty-five Dollars and Ninety-one Cents (\$35.91) with interest at 6% per annum from November 23, 1959 to the date of settlement.

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

OCT 15 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)

CU-8157