

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

IN THE MATTER OF THE CLAIM OF

CARL M. WITHUS
DOROTHY C. WITHUS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0379

Decision No. CU 3594

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 \$16,718.00, was presented by CARL M. WITHUS and DOROTHY C. WITHUS, and is based upon the asserted loss of personal property located in Mariano, Havana, Cuba. 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.

Claimants have asserted their loss as follows:

Inventory Value	\$17,093.00
Less items sold or removed	<u>7,771.00</u>
In warehouse	\$ 9,322.00
Plus currency in private hands	3,500.00
Plus receipts for articles sold	<u>4,014.00</u>
	\$16,836.00
Less payment for claimant's personal account	<u>793.00</u>
	\$16,043.00
Plus asserted loss on items sold below inventory value	<u>675.00</u>
	\$16,718.00

In support of the claim, there has been submitted a detailed 11-page listing of the personalty involved, correspondence concerning goods packed and stored, and other correspondence relating to the property subject of the claim.

On December 6, 1961, the Cuban Government published its Law 989 in its Official Gazette, which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The record shows that claimant CARL M. WITHUS left Cuba on August 12, 1960, DOROTHY C. WITHUS having left prior to that time.

Based on the entire record, the Commission finds that claimants owned certain personal property in Cuba and that it was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

The Commission has considered all evidence of record and finds that the personal property taken on December 6, 1961, had a value, after depreciation, of \$8,700.00, and concludes that the claimants suffered a loss in that amount within the meaning of Title V of the Act.

The Commission finds, however, that the asserted losses of \$3,500.00, \$4,014.00 and \$675.00 are not shown to have been sustained by claimants within the scope of Title V of the Act, and accordingly these items of claim are denied.

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 in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CARL M. WITHUS and DOROTHY C. WITHUS jointly 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 Eight Thousand Seven Hundred Dollars (\$8,700.00) 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

APR 9 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)