

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

IN THE MATTER OF THE CLAIM OF

JAMES KEYS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0991

Decision No. CU 3286

Counsel for claimant:

Freedman, Borowsky & Lorry
by Barton A. Pasternak, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$49,300 plus interest, was presented by JAMES KEYS, being the amount of a judgment against the Republic of 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.

Claimant contends that the claim arose from negligence of Naviera Vacuba, S.A., a company subsequently nationalized by the Republic of Cuba, and that a judgment against the company was converted to a judgment against the Republic of Cuba.

It appears from the record that claimant, on about January 9, 1959, was employed by Jarka Corporation of Philadelphia, Pennsylvania, as a longshoreman. At that time Jarka Corporation was employed in discharging a cargo from the SS "Bahia de Matanzas." Claimant has contended that on January 9, 1959 while performing his duties in connection with discharging the aforesaid cargo, and because of unsafe conditions of the ship, he sustained injuries. Suit was filed December 4, 1960 against Naviera. On February 15, 1961, in Common Pleas Court No. 1, December Term, 1960, No. 327, a default judgment was entered in favor of plaintiff against Naviera and on December 8, 1961, the court sitting without a jury assessed damages for plaintiff in the amount of \$45,928.12.

The SS "Bahia de Matanzas" belonged to the Government of Cuba and had been leased to Naviera Vacuba, S.A. The lease was terminated by Law 841, July 5, 1960 (Cuban Official Gazette). The record further discloses that Naviera Vacuba, S.A. was confiscated by the Government of Cuba on August 26, 1960, by publication in the Cuban Official Gazette pursuant to Cuban Law 715.

In 1964, complaint was filed against the Republic of Cuba, the defendant having been served by serving the Secretary of the Commonwealth, pursuant to 15 P.S. 1342, by the United States Marshal. In connection with the fact that this claimant actually sued the Government of Cuba, this Commission knows that under ordinary conditions, the courts of the United States would not entertain an action against a foreign government and under the act of state doctrine the courts of one country usually will not sit in judgment on the acts of the government of another, done within its own territory. In the

instant claim, however, claimant's action against the Republic of Cuba resulting from its nationalization of Naviera Vacuba, S.A. would be permitted, in the opinion of the Commission, by the Hickenlooper amendment to the Foreign Assistance Act of 1964, 22 U.S.C. §2370(e)(2), Supplement 1967. The amendment provided that notwithstanding any other provision of law, no court in the United States shall decline on account of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959. Here the judgment against Naviera Vacuba, S.A., was later converted into a judgment against the Republic of Cuba on September 24, 1965. The record contains a certified copy of this Judgment against the Republic of Cuba, for \$46,000 with interest at 6% from February 15, 1961.

Inasmuch as this debt of the Government of Cuba has not been paid, the Commission finds that claimant has suffered a loss within the scope of Title V of the Act, in the amount of \$46,000 as of February 15, 1961. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

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 JAMES KEYS 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 Forty-Six Thousand Dollars (\$46,000.00) with interest thereon at 6% per annum from February 15, 1961 to the date of settlement.

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

NOV 6 1968

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).)