

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

IN THE MATTER OF THE CLAIM OF

LINDEN STANLEY BLUE

Claim No. CU-2420

Decision No. CU -192

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision issued August 23, 1967.
No oral hearing requested; hearing on the record.

Hearing on the record held on April 24, 1968

FINAL DECISION

Under date of August 23, 1967, the Commission issued its Proposed Decision denying this claim for claimant's refusal and failure to meet the burden of proof.

Claimant objected to the Proposed Decision and subsequently submitted additional evidence and information in support of this claim.

Based upon all of the evidence of record, the Commission now finds that claimant owned a Beechcraft Twin Bonanza Model D-50 aircraft which was forced by the Government of Cuba to land near Havana, Cuba on March 24, 1961, while flying on a regular international airway route from Key West, Florida to Managua, Nicaragua; and that said aircraft was subsequently illegally detained by the Government of Cuba until its release on March 12, 1962.

Upon consideration of the entire record, the Commission finds that the subject aircraft sustained, during and as a result of the wrongful detention, damage in the total amount of \$24,630.00 (including exterior and interior damage to airframe and engines less depreciation, estimated damage to radio equipment, and estimated "non-visible" damage). However, the record discloses that payment in the amount of \$23,700.00 has been made by an insurance company on account of said loss.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

In accordance with Section 506 of the Act, the amount of \$23,700.00 must be deducted from the amount of loss sustained by claimant; and the Commission concludes that claimant is entitled to a certification of loss in the amount of \$930.00 for this portion of the claim.

The Commission further finds that certain items of personal property were aboard the aforementioned aircraft, including a banana pulping machine, assorted tractor spare parts, a camera, a dictating machine, and personal clothing and effects; and that the aforementioned items of personalty were taken by the Government of Cuba and have never been recovered.

Upon consideration of the entire record, the Commission finds that the items of personal property thus lost, in which claimant has established an ownership interest, had the following values at the time of loss:

banana pulping machine	\$3,475.00
assorted tractor spare parts and other equipment	1,143.30
personal clothing and effects	500.00
camera	350.00
dictating machine	<u>400.00</u>
	\$5,868.30

Accordingly, the Commission concludes that claimant sustained, as of March 24, 1961, a compensable loss in the total amount of \$6,798.30, within the meaning of Title V of the Act.

The Commission has decided that in the 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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate

of 6% per annum from March 24, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

A portion of this claim, in the amount of \$3,100.00, is based upon legal fees and other expenses assertedly borne by claimant in his attempts to recover his aircraft. No specific provision is made in the statute for the inclusion in the certification of loss of such expenses. After consideration of the statute and the legislative history of the Act, the Commission finds that these legal fees and other retrieval expenses were not intended by Congress to constitute a loss resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of nationals of the United States by the Government of Cuba within the meaning of Section 502(3) of the Act. (See Claim of Mary Pauline Seal, Claim No. CU-0059). Accordingly, this portion of the claim is denied.

It is, therefore,

ORDERED that the following certification of loss be entered, and it is further

ORDERED that the remainder of the Proposed Decision, as amended herein, be, and the same is affirmed as the Final Decision of the Commission in this claim.

CERTIFICATION OF LOSS

The Commission certifies that LINDEN STANLEY BLUE 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 Six Thousand Seven Hundred Ninety-Eight Dollars and Thirty Cents (\$6,798.30) with interest thereon at 6% per annum from March 24, 1961 to the date of settlement.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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.

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Counsel for claimant:

Holland & Hart

By: H. Gregory Austin, 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 \$27,250.00 was presented by LINDEN STANLEY BLUE based upon the asserted ownership and loss of certain personal property. The claimant has been a national of the United States since his birth on June 14, 1936.

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.

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).)

This claim is based upon certain personal property said to have been detained and/or confiscated by the Government of Cuba. No evidence has been submitted by the claimant in support of his claim.

Although the claimant has the burden of proof in establishing his claim, suggestions were made to claimant, through counsel, as to evidence appropriate to submit in support of the claim. By Commission letter of June 29, 1967, it was suggested, inter alia, that claimant submit evidence to establish ownership of the property for which claim is made and the amount of the asserted loss.

By letter of July 5, 1967, claimant advised the Commission in part as follows:

Most of the information you request is available but will require some time consuming digging, which I am beginning to do now.

By letter of July 26, 1967, claimant addressed the Commission, in part, as follows:

. . . Given the time it would take to pull together the information you requested previously and the cost this would imply, I think we will have to defer intensive efforts to get the material until such time as Congress provides for settlement or payment of the claim.

From the foregoing, it is clear that the claimant does not choose to establish that he has any claim against the Government of Cuba.

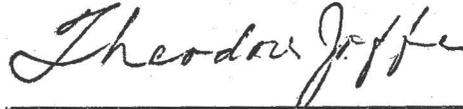
Accordingly, the Commission concludes that this claim is not one within the purview of Title V of the Act, supra (See the Claim of Steel Heddle Manufacturing Company, FCSC Claim No. CU-0737), and it is hereby denied. The Commission deems it unnecessary to make other determinations with respect to this claim.

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

AUG 23 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)

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