CLAIM OF ROY FURUYA

[No. 146–35–2794. Decided August 21, 1951]

FINDINGS OF FACT

This claim * * * alleges loss of personal property * * * including abandonment of a "gardener's route." * * * the claim was * * * enlarged at the hearing, held subsequent to the bar date, to include loss on sale of a Ford pickup truck * * *.

At the time of his evacuation, claimant was self-employed as a gardener and landscaper and had a route of 13 customers by whom he was regularly employed on a monthly basis at amounts ranging from $5 to $25 per month, his total income averaging $150 per month. The record shows, and it is accordingly found, that claimant's route was capable of transfer in and of itself and entirely apart from his tools and equipment; furthermore, that the transfer value of such a route was customarily "set by the trade" at twice the gardener's monthly income. The then fair and reasonable value of claimant's route, therefore, was $300.

* * * Claimant was * * * unable to sell his "gardener's route" and he has not resumed the route since his return from the relocation center. * * *

As indicated above, the original statement of claim did not include the loss from the sale of the Ford pickup truck, claimant adding this item at the hearing and subsequent to the bar date. The record discloses that claimant intended to include the truck in his original statement of claim but inadvertently failed to do so.

REASONS FOR DECISION

* * * * *

The compensability of claimant's loss from the abandonment of his "Gardener's route" offers little difficulty. That "property" may be tangible and intangible and that the statutory use of the term embraces both species is scarely open to doubt. Not only does Section 1 employ the term generally, merely referring to claims "for damage to or loss of real or personal property," but it specifically provides that such claims shall be determined "according to law." And it is elementary in law that the term "property" extends to intangibles as well as tangibles. *Kimball Laundry Co.* v. *United States,* 338 U. S. 1. Moreover, not only is this construction proper "according to law," but it likewise finds ample support in the legislative history of the Statute which, as pointed out in previous adjudications, unmistakably reveals an affirmative congressional intent on the matter. See e. g., *Toshichi Nakamura, ante,* p. 108, and *Noboru Sumi, ante,* p. 225; cf. *Toshi Shimomaye, ante,* p. 1. Statutory coverage of intangible property being thus clear, the sole question presented is whether claimant's "gardener's route" properly qualifies as such. That this question must be answered in the affirmative is plain from the authority previously cited, *supra,* namely, *Kimball Laundry Co.* v. *United States.* The latter case involved a claim against the Government for laundry routes constructively preempted in connection with the "taking" of the company's laundry plant for temporary use by the Army. Because the "taking" was on a temporary basis and of uncertain duration and it had no other means of serving its customers, the company was forced to suspend operations for the period of Army occupancy (November 21, 1942, to March 23, 1946) with resultant destruction of its routes. It accordingly sought "just compensation" not only for the use of its physical property, i. e., land, plant, and equipment but also for its destroyed "trade routes." Sustaining the claim in its entirety, the Supreme Court held that, in the particular circumstances involved, the laundry routes had

been "taken"; furthermore, that the company was entitled to "just compensation" therefor under the Fifth Amendment [1] because the term "property" includes intangibles as well as tangibles and the laundry routes came within its purview since they were transferable and had transfer value. The decisive impact of these holdings on the instant case precludes need for extended discussion. The test for recognition of intangible property being transferability and transfer value and the record establishing that claimant's "gardener's route" satisfies both requirements, the loss from its abandonment necessarily is compensable.[2]

With respect to the claim for the Ford pick-up truck, inadvertently omitted from the claim form and initially presented after the bar date, the issue raised is, of course, the effect thereon of the limitation provision contained in Section 2 (a) of the Statute. The principles of statutory construction involved are well settled. As pointed out in prior adjudications, where an amendment subsequent to the bar date merely amplifies or rectifies the claim originally set forth, or attempted to be set forth, the limitation provision of Section 2 (a) of the Statute is inapplicable because of the legal doctrine of "relation back." *Kiyoji Murai, ante,* p. 45; *Shigemi Orimoto, ante,* p. 103; *Hideko Tateoka, ante,* p. 180. They do apply,

[1] U. S. Const., Amend. V: "* * * nor shall private property be taken for public use, without just compensation." As appears from the foregoing, the use of the term "property" in the amendment, as in the instant Statute, is general and without qualification.

[2] It should be noted, in passing, that in briefs submitted by counsel for claimant and the Japanese-American Citizens League, as *amicus curiae,* the instant case had been discussed as one involving compensability of "goodwill" in general. It is obvious, however, that such discussion transcends the specific issue involved and introduces matter outside the record since the case presents no such problem and is of much narrower compass. Accordingly, it has been deemed unnecessary to determine the issue raised in the briefs and nothing herein contained is to be construed as relating to the matter of "goodwill" in general.

however, and represent an insurmountable bar if such an amendment introduces an entirely new claim and an entirely new "cause of action." *Yasuhei Nagashima, ante,* p. 135.[3] Equally clear as the statement of these principles is their application in practice. Thus, where the record affirmatively establishes, as in *Nagashima, supra,* that the original claim was restricted in character and that the claimant did not intend to include therein the material subsequently sought to be added, the amendment necessarily must be denied. On the other hand, if, as in the *Murai* and *Orimoto* cases, the record reveals that the new material constitutes part of the claim originally intended, allowance of the amendment is proper. Viewing the problem here presented in the context of the foregoing, the solution thereto becomes readily apparent. As appears from the findings of fact, and as is conclusively shown by the record, the claim in the instant case, unlike that in *Nagashima,* was not intended to be restricted in character. Rather, the record, including the evidence offered by claimant in support of his amendment, clearly establishes that the conduct relied upon as the basis of claim and originally attempted to be set forth was claimant's disposition of all his property at the time of his evacuation. Moreover, but for inadvertence, claimant would have achieved more complete specificity and would have set forth the claim intended. This being the fact,

[3] Cf. Rule (c) of the *Federal Rules of Civil Procedure,* 28 U. S. C. following § 723 (c), which provides: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence *set forth or attempted to be set forth* in the original pleading, the amendment relates back to the date of the original pleading." As appears from the authorities cited in *Shigemi Orimoto* (text, *supra*), a similar principle is applied in most jurisdictions, sometimes as a result of express statutory provision. Thus, e. g., under Section 51 of the Massachusetts Practice Act (Mass. G. L., Ch. 231), the court may allow any amendment "which may enable the plaintiff to sustain the action for the cause *for which it was intended to be brought,* or enable the defendant to make a legal defense." [Emphasis supplied.]

and the amendment being merely designed to enable claimant to maintain the claim originally intended and attempted to be set forth, it is plain that the principle stated in the *Murai* and *Orimoto* cases is here applicable. It follows, therefore, that allowance of the amendment is proper and claimant's loss from the sale of his truck is compensable.