

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

IN THE MATTER OF THE CLAIM OF

NICHOLSON FILE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0120

Decision No. CU **420**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by NICHOLSON FILE COMPANY in the amount of \$48,773.55, based upon the asserted loss of payment for merchandise shipped to Cuba.

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.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Rhode Island in 1864 and that at all times between 1864 and presentation of this claim on June 24, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. Claimant states that 98% of its stockholders are nationals of the United States.

The Commission finds that claimant owned 100% of the outstanding capital stock of Nicholson File International, S.A., a Venezuelan corporation organized in 1955 and liquidated in 1962. Upon liquidation, claimant acquired all of the assets of Nicholson File International, S.A.

The record contains copies of bank drafts, as follows, which were drawn upon various Cuban debtor firms by Nicholson File International, S.A. With each draft is a statement by the appropriate Cuban collecting bank showing that the drafts had been paid by the Cuban firms in local currency, but that remittance must await approval by Cuban authorities.

<u>Draft Number</u>	<u>Amount of Draft</u>	<u>Date of Draft</u>	<u>Date of Local Currency Deposit</u>
N 6266	\$ 726.92	April 27, 1959	February 1, 1960
N 6484	1,912.52	June 15, 1959	November 30, 1959
N 6844	1,852.60	August 31, 1959	April 8, 1960
N 7188	1,543.23	November 17, 1959	December 18, 1959
N 7189	1,454.48	November 17, 1959	January 20, 1960
N 7190	1,192.76	November 17, 1959	January 5, 1960
N 7228	5,647.42	November 25, 1959	March 28, 1960
N 7260	2,360.60	November 30, 1959	January 26, 1960
N 7262	3,332.44	November 30, 1959	February 15, 1960
N 7263	1,551.43	November 30, 1959	February 15, 1960
N 7264	1,738.18	November 30, 1959	February 16, 1960
N 7267	2,348.77	November 30, 1959	December 28, 1959
N 7287	986.90	December 4, 1959	April 5, 1960
N 7288	2,398.22	December 4, 1959	July 27, 1960

<u>Draft Number</u>	<u>Amount of Draft</u>	<u>Date of Draft</u>	<u>Date of Local Currency Deposit</u>
N 7301	\$ 2,102.94	December 10, 1959	December 24, 1959
N 7302	2,688.63	December 10, 1959	January 5, 1960
N 7303	1,270.29	December 10, 1959	June 2, 1960
N 7304	3,810.33	December 10, 1959	March 1, 1960
N 7307	2,394.15	December 10, 1959	December 29, 1959
N 7352	1,300.81	December 16, 1959	August 15, 1960
N 7357	4,426.33	December 18, 1959	March 20, 1960
N 7360	1,225.64	December 23, 1959	May 30, 1960
N 7369	507.96	December 28, 1959	January 15, 1960
Total \$ 48,773.55			

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on December 1, 1959 as to \$1,912.52, on December 19, 1959 as to \$1,543.23, on December 25, 1959 as to \$2,102.94, on December 29, 1959 as to \$2,348.77, on December 30, 1959 as to \$2,394.15, on January 6, 1960 as to \$3,881.39, on January 16, 1960 as to \$507.96, on January 21, 1960 as to \$1,454.48, on January 27, 1960 as to \$2,360.60, on February 2, 1960 as to \$726.92, on February 16, 1960 as to \$4,883.87, on February 17, 1960 as to \$1,738.18, on March 2, 1960 as to \$3,810.33, on March 21, 1960 as to \$4,426.33, on March 29, 1960 as to \$5,647.42, on April 6, 1960 as to \$986.90, on April 9, 1960 as to

\$1,852.60, on March 31, 1960 as to \$1,225.64, on June 3, 1960 as to \$1,270.29, on July 28, 1960 as to \$2,398.22, and on August 16, 1960 as to \$1,300.81, the days following payment in local currency or notification thereof.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC 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 the date on which each loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that NICHOLSON FILE COMPANY 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-Eight Thousand Seven Hundred Seventy-Three Dollars and Fifty-Five Cents (\$48,773.55) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 4 1967

CERTIFICATION

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

is is a true and correct copy of the decision
the Commission shall be entered as the final
decision of
6 NOV 1967

Francis Mackerson
Clerk of the Commission

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).)