

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

IN THE MATTER OF THE CLAIM OF

HARRY W. GRAFF INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0338

Decision No. CU-3021

Counsel for Claimant:

Leon, Weill & Mahony
By: Abe Siegel, Esq.

FINAL DECISION

By Proposed Decision issued September 11, 1968, the Commission certified claimant's loss in the amount of \$23,500. The record now reflects that claimant was represented by counsel as above. Accordingly, no objection having been entered, the Proposed Decision is amended to reflect claimant's representation by counsel, and as so amended is entered as the Commission's Final Decision in this matter.

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

JAN 8 1969

Leonard B. Sutton
Leonard B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

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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 HARRY W. GRAFF INTERNATIONAL CORPORATION in the amount of \$26,063.85 based upon the asserted loss of an account receivable and legal fees incurred in the collection of the outstanding account receivable.

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)(B) of the Act defines the term "national of the United States" as 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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized under the laws of the State of New York and that at all times between 1957 and presentation of this claim all of its stock is beneficially owned by a United States national. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant rendered advertising and public relation services for Cubana Airlines, a Cuban company. The record contains a copy of claimant's ledger sheet dated June 25, 1965, and copies of invoices, containing itemized statements of services rendered.

The evidence of record shows that claimant discontinued its advertising services for Cubana Airlines on about October 31, 1960. The business records furnished by claimant reflect that the unpaid balance owed by Cubana Airlines was \$23,500.00. Claimant states that it has not received the funds.

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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 Claim of the Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46)

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 November 10, 1960 as to \$23,500.00, the date payment was due.

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A portion of the claim in the amount of \$2,563.85 is based upon legal expenses incurred during the period 1961-1963, by claimant corporation in efforts to obtain collection of the unpaid debt owed by Cubana Airlines. The Commission holds that legal expenses incurred in the attempted collection of an unpaid debt are not within the scope of the Act. Accordingly this item of claim is denied.

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 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 the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

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CERTIFICATION OF LOSS

The Commission certifies that HARRY W. GRAFF INTERNATIONAL CORPORATION 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 Twenty-three Thousand Five Hundred Dollars (\$23,500.00) with interest thereon at 6% per annum from November 10, 1960 to the date of settlement.

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

SEP 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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. 412-13 (1967).)