

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

IN THE MATTER OF THE CLAIM OF

IDEAL SHOE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0359

Decision No. CU -611

ORDER AND AMENDED PROPOSED DECISION

On November 15, 1967 the Commission issued its Proposed Decision denying this claim for failure of proof. Claimant objected to the Proposed Decision and thereafter submitted additional evidence and information in support of the claim. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of the Commission be, and the same is hereby amended.

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.

An officer of the claimant corporation has certified that the claimant was organized in Pennsylvania and that at all times between April 4, 1932 and presentation of this claim on August 17, 1965, not less than 99.8% of its outstanding capital stock was owned, directly or indirectly, by citizens of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of a shipping order, delivery receipt, ledger sheet, acknowledgement by a bank in Cuba of receipt of a draft for collection, and correspondence between claimant, its debtor, the bank, and the American Embassy in Cuba. This documentation discloses that on October 14, 1958 claimant shipped 77 cases of shoes to Jose Heiblum Liberman, doing business in Cuba under the name of "Texan"; that the original amount owed to claimant therefor was \$1,980.05; and that subsequent payments were made by "Texan" and received by claimant, leaving a balance due of \$430.67. Claimant states that this amount has not been received.

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, in the amount of \$430.67, occurred on September 29, 1959.

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 it is so ordered.

The following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that IDEAL SHOE 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 Four Hundred Thirty Dollars and Sixty-seven Cents (\$430.67) with interest at 6% per annum from September 29, 1959 to the date of settlement.

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

OCT 9 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 Amended 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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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$632.60, was presented by IDEAL SHOE COMPANY, and is based upon the asserted loss of payment for merchandise shipped to Cuba, plus interest.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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).)

Claimant asserts that at all times between April 4, 1932, and the presentation of this claim on August 17, 1965, more than 50 per cent of the outstanding stock of claimant corporation was held by nationals of the United States. Claimant further asserts that at all times pertinent to this claim there were 1,870 shares of stock outstanding, held by 4 or less persons. However, no evidence of the nationality of any of the stockholders has been received.

Moreover, other than a photocopy of a purported statement of account, claimant submitted no evidence to establish a compensable claim under the Act. Accordingly, by Commission letter of July 12, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of January 20, 1967, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On September 18, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

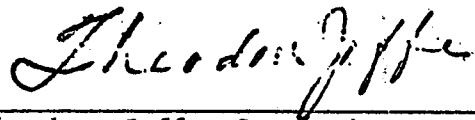
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership, by a national or nationals of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

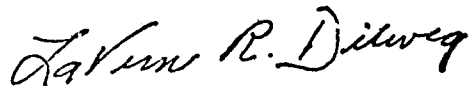
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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CU-0359