

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

SEABOARD AIR LINE RAILROAD COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0360

Decision No. CU 547

Counsel for Claimant:

Frank J. Wideman, Jr., Esq.

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 SEABOARD AIR LINE RAILROAD COMPANY in the amount of \$21,811.71 based upon the asserted loss of payment on a debt owed to the claimant by a Cuban firm, Dussaq, Company, Ltd., S.A., of Havana, 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 Virginia and that all times between August 1, 1949 and presentation of this claim on August 17, 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 98.59% of its stockholders are United States nationals and 1.41% of its stockholders are residents of foreign countries and assumed to be citizens of those countries.

The record contains a copy of an agreement between the claimant and Dussaq Company, Ltd., S.A. (Dussaq) of Havana, Cuba, dated January 20, 1948, wherein Dussaq agreed to serve as the ticket agent in Havana for the claimant. The record further contains a copy of the business records of the claimant showing that between October 1959 and April 1960, Dussaq Company Ltd., S.A. sold tickets of claimant, the receipts of which, less certain specified commissions, refunds, and other expenses, and totalling \$21,811.71 were to be remitted to claimant. The file also contains other evidence to establish that the funds were on deposit with the Banco Nacional de Cuba. Claimant asserts that although the Dussaq Company made efforts to remit said monies to the claimant, it was prevented from doing so because of the currency regulations of the Cuban Government. Claimant states that it has never 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, FGSC Claim No. GU-0019; and the Claim of Etna Pozzolana Corporation, FGSC Claim No. GU-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 May 1, 1960 as to \$21,811.71 the day after the last day of sales and the date that payment of all the receipts to claimant were due.

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 the Claim of Lisle Corporation, FGSC Claim No. GU-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.

CERTIFICATION OF LOSS

The Commission certifies that SEABOARD AIR LINE RAILROAD 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 Twenty-One Thousand Eight Hundred Eleven Dollars and Seventy-One Cents (\$21,811.71) 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

NOV 1 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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A TRUE COPY OF THE COMMISSION
DECISION WAS FORWARDED AS THE FINAL
DECISION ON
APR 25 1967
Walter H. ...
SECRETARY OF THE COMMISSION

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 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).)