

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

IN THE MATTER OF THE CLAIM OF

MERCHANTS NATIONAL BANK OF MOBILE, TRUSTEE
U/W OF JAMES RANDOLPH WESTERFIELD, DECEASED

Claim No. CU - 0364

Decision No. CU

596

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Vickers, Riis, Murray &
Curran
by Edwin J. Curran, Jr. Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$11,659.17, was presented by MERCHANTS NATIONAL BANK OF MOBILE, TRUSTEE U/W OF JAMES RANDOLPH WESTERFIELD, DECEASED, based upon the asserted loss of payment for merchandise shipped to Cuba. The decedent and all heirs under his will holding beneficial interests in this claim acquired United States nationality by birth.

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. That section provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of 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.

Claimant, as Trustee under decedent's will, has submitted a list of drafts drawn by the J. R. Westerfield Lumber Company, a sole proprietorship owned and operated by decedent, against Cia. De Maderas de Caibarien, S.A., Caibarien, Cuba for goods shipped to that consignee. Claimant asserts that each draft, identified by the collecting bank's number and the amount, was paid in local currency on the following dates:

<u>COLLECTING BANK NO.</u>	<u>AMOUNT</u>	<u>DATE OF PAYMENT</u>
BC 940	\$1,233.26	October 30, 1959
BC 1242	858.03	November 9, 1959
BC 1243	858.03	December 18, 1959
BC 1791	992.83	February 19, 1960
BC 152	\$1,071.69	February 23, 1960
BC 1792	992.84	March 15, 1960
BC 153	\$1,071.69	March 30, 1960
BC 322	909.81	June 21, 1960
BC 1374	909.82	August 9, 1960
BC 1522	909.81	August 22, 1960
BC 1689	303.27	October 28, 1960
BC 1858	313.85	November 23, 1960
BC 18	303.27	December 13, 1960
BC 19	303.27	December 28, 1960
BC 204	313.85	January 25, 1961
BC 297	313.85	February 14, 1961.

Additionally, the record contains copies of letters and notices from the collecting bank, addressed to the Merchants National Bank of Mobile, advising that these drafts were paid in local currency on the above dates. Claimant states that the decedent 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 transfers of funds, in this and similar cases, 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).

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 losses occurred on the days after the dates of payment, as acknowledged by the collecting bank in Cuba.

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, 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 dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

On \$1,233.26 from October 31, 1959
On \$ 858.03 from November 10, 1959
On \$ 858.03 from December 19, 1959
On \$ 992.83 from February 20, 1960
On \$1,071.69 from February 24, 1960
On \$ 992.84 from March 16, 1960
On \$1,071.69 from March 31, 1960
On \$ 909.81 from June 22, 1960
On \$ 909.82 from August 10, 1960
On \$ 909.81 from August 23, 1960
On \$ 303.27 from October 29, 1960
On \$ 313.85 from November 24, 1960
On \$ 303.27 from December 14, 1960
On \$ 303.27 from December 29, 1960
On \$ 313.85 from January 26, 1961
On \$ 313.85 from February 15, 1961.

CERTIFICATION OF LOSS

The Commission certifies that MERCHANTS NATIONAL BANK OF MOBILE, TRUSTEE, U/W OF JAMES RANDOLPH WESTERFIELD, DECEASED, suffered and succeeded to 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 Eleven Thousand Six Hundred Fifty-Nine Dollars and Seventeen Cents, (\$11,659.17) 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 15 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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 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).)

CU-0364