

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

IN THE MATTER OF THE CLAIM OF

**BERNARD A. ZWEIFACH
d/b/a WORLD WIDE FREIGHT
FORWARDING COMPANY**

Claim No. CU-0522

Decision No. CU 6147

**Under the International Claims Settlement
Act of 1949, as amended**

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 \$42,447.60, was presented on October 1, 1965, by BERNARD A. ZWEIFACH, based upon the asserted loss of payment of transportation charges expended on behalf of various customers in Cuba and upon ownership and loss of merchandise shipped to Cuba. Claimant has been a national of the United States since 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. 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.

The evidence of record consists of bank correspondence, invoices, bills of lading, ledger sheets, affidavits of Cuban customers, a former bank manager in Cuba, an officer of a steamship line, a statement from claimant's accountant and claimant's current certificate of doing business under a trade name.

The Commission finds that claimant was engaged in the international freight forwarding business in Cuba; was an agent for the Cuban customers and in some instances was the owner of goods shipped to Cuban customers. Claimant incurred expenses on behalf of Cuban customers for ocean freight charges, consular fees, local cartage, postage, etc. His basic procedure was in drawing for his forwarding expenses by draft against his customer principal, accompanying such drafts with the supporting documents. In other instances an open account procedure was used. On eight accounts claimant purchased the merchandise from United States firms as an accommodation to Cuban customers.

The evidence further reflects that in 40 instances the Cuban customers paid the freight charges to local Cuban banks and that the dollar reimbursement releases or authorization were never granted by the Cuban governmental official. In 101 instances drafts for the charges and in 8 instances for charges and merchandise were not paid to the collecting bank by the Cuban customers.

The total amounts due and payable are as follows:

<u>Item</u>	<u>Total</u>
40 payments of drafts to local Cuban banks	\$23,112.03
101 open accounts on freight charges	17,392.34
8 accounts for merchandise and charges	<u>3,011.83</u>
	\$43,516.20

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 customers in Cuba 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 in 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.)

The Commission finds that claimant's right to receive payment for the aforesaid charges and shipments was lost as a result of the intervention by the Government of Cuba. Claimant has submitted evidence to establish that the subject accounts were payable between November 12, 1958 and February 20, 1961 but asserts that he has not received payment for the outstanding accounts, enumerated above.

The Commission further finds that for the purpose of this decision all the accounts were due and payable on or before March 20, 1961, or 30 days after the date that the last draft was due and payable.

The Commission has decided that in certifications of loss 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 in the instant case it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. In determining the amount of


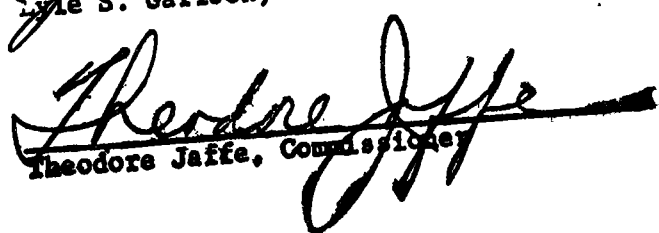
loss sustained, however, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that BERNARD A. ZWEIFACH, d/b/a WORLD WIDE FREIGHT FORWARDING 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-Three Thousand Five Hundred Sixteen Dollars and Twenty Cents (\$43,516.20) with interest at 6% per annum from March 20, 1961 to the date of settlement.

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

APR 7 1971


Lyle S. Garlock, Chairman

Theodore Jaffe, 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 (1970).)

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