

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

IN THE MATTER OF THE CLAIM OF

JACUZZI EXPORT SALES COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0556

Decision No. CU -1280

Counsel for claimant:

Smith, Williams, Friday & Bowen

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 JACUZZI EXPORT SALES COMPANY, INC. in the amount of \$63,565.76 based upon the asserted loss of payment for merchandise shipped to 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, JACUZZI EXPORT SALES COMPANY, INC., has certified that the corporation was incorporated in the State of California on January 8, 1953; that it is a wholly-owned subsidiary of Jacuzzi Brothers, Inc., a California corporation; and submitted a statement that at all times between the date of loss and presentation of this claim on November 1, 1965, more than 99% of the 261,578 stockholders of Jacuzzi Brothers, Inc., the parent corporation, were 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.

The record contains copies of claimant's invoices, as listed below, reflecting sales of goods to its Cuban consignee, Compania Importadora Gonzalez del Real, S.A.:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
282149-51	November 27, 1959	\$ 14,152.04
freight		1,269.24
credit	December 21, 1959	(51.48)
283253-56	March 11, 1960	13,572.43
freight		2,185.76
283314	March 23, 1960	5,299.20
283716-17	June 7, 1960	440.42
freight		44.87
283718	June 28, 1960	4,456.05
freight		436.02
283719-20	June 28, 1960	5,154.40
freight		480.22
	Total (less credits)	\$ 47,439.17

Claimant states that it has not 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 Etna Pozzolana Corporation, FCSC Claim No. CU-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 January 27, 1960, as to	\$15,369.80	
On May 11, 1960, as to	15,758.19	
On May 23, 1960, as to	5,299.20	
On August 7, 1960, as to	485.29	
On August 28, 1960, as to	10,526.69	
	<u>\$47,439.17</u>	Total

being the dates on which payment was due.

Claim has been made for \$16,117.13 for interest since the time of loss. However, the Commission has decided that in the 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.

CERTIFICATION OF LOSS

The Commission certifies that JACUZZI EXPORT SALES COMPANY, INC. 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-Seven Thousand Four Hundred Thirty-Nine Dollars and Seventeen Cents (\$47,439.17) 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

FEB 14 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 18 1968

Francis MacKinnon
Clerk 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).)

CU-0556