

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

IN THE MATTER OF THE CLAIM OF

BLACHER BROTHERS, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0658

Decision No. CU

245

Counsel for claimant:

Adelson & Chernick

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$4,580.41 was presented by BLACHER BROTHERS, INC. 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."

The record includes a certification dated August 2, 1966, from the Office of the Secretary of State of the State of Rhode Island that claimant, BLACHER BROTHERS, INC., a Rhode Island corporation in good standing, filed original Articles of Association in that state on July 8, 1946. An officer of the claimant corporation has certified that at all times between July 1946 and presentation of this claim on January 20, 1966, 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.

The record contains copy of claimant's invoice Nos. 2205, 2206, and 2207 of October 10, 1958, reflecting the sale to Antonio Caballero of Havana, Cuba, of goods totalling \$6,815.72 as to which freight, shipping and other attendant fees increased the total to \$6,873.63. Claimant states that on February 27, 1959, it received payment for \$2,291.21 leaving a balance of \$4,580.41. A copy of claimant's account receivable ledger dated December 1, 1959, showing a balance due of \$4,580.41 was also submitted.

Additionally, the record includes a letter of August 25, 1959, from the claimant's exporter, Joseph B. Gabai to claimant in which it is stated that claimant's collecting agent in Havana, M. Cheni had collected the balance owed by the consignee, Antonio Cabellero and that Mr. Cheni would try to convert some of this money into United States currency. In a letter dated October 13, 1959, Mr. Gabai informed the claimant that Mr. Cheni was experiencing difficulty in transferring the collected monies from Havana to the claimant in New York. Claimant states 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 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 loss occurred on September 29, 1959 in the amount of \$4,580.41.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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 BLACHER BROTHERS, 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 Four Thousand Five Hundred Eighty Dollars and Forty-One Cents (\$4,580.41) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

SEP 6 1967

CERTIFICATION

In a true and correct copy of the decision  
by Commission which was entered as the final  
decision on SEP 6 1967

*Francis Thompson*  
Francis Thompson, Commissioner

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

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).)