

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

IN THE MATTER OF THE CLAIM OF

PAUL E. MOSS & COMPANY, INC.

Claim No. CU-0810

Decision No. CU

429

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Milton Loewe, 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 PAUL E. MOSS & COMPANY, INC. in the amount of \$7,063.98 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 has certified that the claimant was organized in the State of New York and that all times between January 21, 1960 and presentation of this claim on August 24, 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.

Claimant states that one hundred (100) percent of the 10 shares of stock in claimant corporation have been owned at all times pertinent to this claim by Paul E. Moss and Dorothy A. Moss, both of whom are native-born citizens of the United States.

The record contains copies of claimant's invoices reflecting the sale, to various Cuban consignees, of goods in the amounts hereafter listed:

<u>Invoices</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
EXI-7-3099	F. Hernandey	\$ 427.56	December 7, 1958
EXI-7-4012	Neira & Gonzalez	634.92	September 22, 1959
EXI-7-4149	Accesorios Valles, S. A.	546.82	October 31, 1959
EXI-7-4347	Angel Martin y Hno	952.12	December 19, 1959
EXI-7-4406	Trans-America, S. A.	3,312.66	January 9, 1960
EXI-7-4444	Alvaro Fernandez	1,189.90	January 18, 1960

The record also includes notices, from the Irving Trust Company of New York, New York, addressed to claimant corporation confirming that the said bank had been advised, on various dates, that drafts covering five of the listed invoices had been paid in local currency to the collecting Cuban bank, as follows:

<u>Invoice No.</u>	<u>Date of Payment</u>
EXI-7-3099	January 20, 1960
EXI-7-4012	August 25, 1960
EXI-7-4149	February 3, 1960
EXI-7-4406	March 23, 1960
EXI-7-4444	May 5, 1961

With regard to the remaining item of \$952.12 under Invoice No. EXI-7-4347, claimant states that it never received notice of payment. Claimant states that it has not received any of the funds in question.

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, FCSC Claim No. CU-0019; and 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 losses occurred on the days after the collecting bank advised of payment, and on the due date of Invoice No. EXI-7-4347, as follows:

<u>Invoice No.</u>	<u>Amount</u>	<u>Date of Loss</u>
EXI-7-3099	\$ 427.56	January 21, 1960
EXI-7-4012	634.92	August 26, 1960
EXI-7-4149	546.82	February 4, 1960
EXI-7-4406	3,312.56	March 24, 1960
EXI-7-4444	1,189.90	May 6, 1961
EXI-7-4347	952.12	December 19, 1959

The Commission has decided that in certifications 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 \$427.56 from January 21, 1960
- On \$634.92 from August 26, 1960
- On \$546.82 from February 4, 1960
- On \$3,312.66 from March 24, 1960
- On \$1,189.90 from May 6, 1961
- On \$952.12 from December 19, 1959

CERTIFICATION OF LOSS

The Commission certifies that PAUL E. MOSS & 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 1940, as amended, in the amount of Seven Thousand Sixty-Three Dollars and Ninety-Eight Cents (\$7,063.98) 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

OCT 18 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Lavern R. Dilweg
Lavern R. Dilweg, Commissioner

CERTIFICATION
This is a true and correct copy of the decision of the Commission as entered as the final decision on 21 NOV 1967
Francis Matthews
Francis Matthews, 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).)