

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

IN THE MATTER OF THE CLAIM OF

THE LUNKENHEIMER COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0869

Decision No. CU **303**

Counsel for claimant:

Frost & Jacobs

By: Donald McG. Rose, 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 THE LUNKENHEIMER COMPANY in the amount of \$45,987.71, as amended, 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 LUNKENHEIMER COMPANY, predecessor in interest of the claimant, was organized in the State of Ohio in 1889; that the claimant was organized in the State of Delaware on November 21, 1962; that the claimant formerly known as Valvco Corporation purchased all the assets of the Ohio corporation including its name, on February 5, 1964; and that at all times between incorporation of the old Lunkenheimer Corporation in 1889 and presentation of this claim by the present Lunkenheimer Company on November 7, 1966, more than 50% of the outstanding capital stock of the claimant and its predecessor has been owned by United States nationals. The Commission holds that claimant is the legal successor in interest to The Lunkenheimer Company of Ohio, and that claimant and its predecessor qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 97.33% of its 1,844 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that 2.67% of its stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copies of statements of account reflecting the sale to Ferreteria Lorida, S.A. of Havana, Cuba, of goods in the total amount of \$37,690.57 reduced by proffered credits totalling \$284.41 to \$37,406.16, and the sale to J. Chertudi & Co., S. En. C. of Manzanillo, Cuba, of goods in the total amount of \$8,363.54.

Additionally, the record includes letters from the First National City Bank of New York to claimant's predecessor, in which it is stated that collections totalling \$37,624.17 were paid by the consignee Ferreteria Lorida, S.A., and that the collection of \$8,363.54 was paid by the consignee J. Chertudi & Co., S. En. C. It appears that Ferreteria Lorida, S.A. took advantage of the proffered credits only to the extent of \$66.40, the amount of an early open account item reflected in the statement of account. The First National City Bank of New York stated it was still awaiting dollar reimbursement releases from the Exchange Board, a Cuban Government agency. Claimant states that neither it nor its predecessor have 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 March 3, 1960, as to \$1,973.15, on March 24, 1960, as to \$35,651.02, and on February 17, 1960, as to \$8,363.54, the days after the collections were acknowledged by the collecting bank.

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 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 THE LUNKENHEIMER 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-Five Thousand Nine Hundred Eighty-Seven Dollars and Seventy-One Cents (\$45,987.71) 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

SEP 20 1967

*Edward D. Re*  
Edward D. Re, Chairman

*20 OCT 1967*  
This is a true and correct copy of the decision of the Commission entered as the final decision on -

*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).)

CU-0869