

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

IN THE MATTER OF THE CLAIM OF

D. C. ANDREWS AND COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1129

Decision No. CU 450

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 D. C. ANDREWS AND COMPANY, INC. in the amount of \$2,618.16 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 on May 9, 1913 under the laws of the State of New York and that at all times between 1913 and presentation of this claim on March 15, 1967, 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 all of the stockholders at the time of the presentation of the claim to the Commission were United States nationals.

The record contains copy of The Rapids-Standard Co., Inc. invoices Nos. 223903 and 223904 dated August 17, 1960 reflecting the sale to Rios-Manipulacion Industrial, S.A., Virtudes 667, Havana, Cuba, of goods totalling \$2,100.43, as to which freight, shipping and other attendant fees increased the total to \$2,296.20; and copy of Graphic Arts Supply Co.'s Order No. 0604 dated February 29, 1960, which reflects the purchase from Ris Paper Company of goods totalling \$252.70, and as to which freight, shipping and other fees increased the total to \$321.96.

The record reflects that claimant corporation acted as the consignors' agent, as a freight forwarder whereby he shipped the goods to the consignees in Cuba. With regard to invoice Nos. 223903 and 223904, claimant shipped the goods prior to obtaining an Import License from the Cuban authorities. Accordingly, claimant by letter dated December 21, 1960 reimbursed Rapids-Standard Co., Inc. with the understanding that upon collection of the draft, claimant would be entitled to the monies. With regard to Order No. 0604, claimant entered into an agreement with Ris Paper Co., the consignor, and confirmed in a letter dated October 6, 1960, that claimant would reimburse the consignor for the goods shipped with the understanding that claimant would be entitled to the monies upon collection by the consignor.

Further, the record contains several letters concerning the collection by the Cuban bank of \$2,296.20; in particular, one dated February 6, 1961, to claimant from Luis G. Ruis, the consignor's distributor in Cuba, wherein he stated that payment (represented by claimant to be the \$2,296.20 amount) had been made to Banco Hipotecario on January 13, 1961, and that it was awaiting a dollar reimbursement release. By letter dated September 19, 1963, the Royal Bank of Canada stated that it was still awaiting said release. With regard to the collection of \$321.96, the record contains a letter dated July 6, 1960, to claimant, from the Bank of Nova Scotia, wherein it stated that its branch bank had the monies but that it could not obtain a dollar reimbursement release from the Cuban authorities. The record also contains a letter dated March 7, 1961, to Banco Nacional de Cuba, from the Bank of Nova Scotia, wherein it stated that it was still awaiting a dollar release. This was confirmed by the Banco Nacional de Cuba in its letter dated March 27, 1961. 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 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 January 14, 1961 as to \$2,296.20, one day after payment was made to the local Cuban bank; and on July 7, 1960 as to \$321.96, one day after the collection was acknowledged by the Bank of Nova Scotia.

The Commission has decided that in 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 respective dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

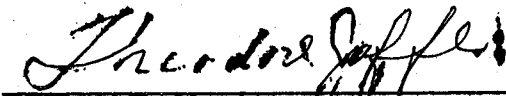
CERTIFICATION OF LOSS

The Commission certifies that D. C. ANDREWS AND 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 Two Thousand Six Hundred Eighteen Dollars and Sixteen Cents (\$2,618.16) 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 25 1967**

  
Edward D. Re, Chairman

  
Theodore Jaffe, Commissioner

  
LaVern R. Dilweg, 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).)