

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

IN THE MATTER OF THE CLAIM OF

DELANO CORPORATION OF AMERICA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1654

Decision No. CU 800 120

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,414.39, was presented by DELANO CORPORATION OF AMERICA 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 discloses that claimant was organized in the State of New York, and at all times between 1946 and presentation of this claim on April 19, 1967, more than 50% of the 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 its stockholders were United States nationals.

The record contains, inter alia, a copy of claimant's invoice No. 001179 of August 17, 1960, reflecting the sale to Pedro Barba y Hermanos, S.A. of Santiago, Cuba, of goods totalling \$1,426.95, as to which freight, shipping and other attendant fees increased the total to \$1,457.20, and a copy of claimant's credit memorandum of August 19, 1960, in the amount of \$42.81.

Additionally, the record includes a letter of October 14, 1960, from claimant's Cuban agent to claimant, in which it is stated that the subject invoice had been honored by the consignee, Pedro Barba y Hermanos, S.A. to the First National Bank of Boston (Santiago Branch), and that on September 13, 1960, said Bank had transferred the funds to the Banco Nacional de Cuba. 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 September 14, 1960, the day after the collection was transferred to the Banco Nacional de Cuba.

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 DELANO CORPORATION OF AMERICA 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 One Thousand Four Hundred Fourteen Dollars and Thirty-Nine Cents (\$1,414.39) 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

JUL 26 1967

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).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on -----**AUG 25 1967**----- CU-1654

James Mackintosh
Clerk of the Commission