

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

IN THE MATTER OF THE CLAIM OF

THE FOXBORO COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -1695

Decision No. CU 775

Counsel for claimant:

Goodwin, Procter and Hoar

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 FOXBORO COMPANY in the amount of \$16,204.06 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 Massachusetts and that all times between January 1, 1914 and presentation of this claim on April 20, 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 96.88% of its stockholders were residents of the United States and are assumed to be United States nationals and 3.12% were residents of foreign countries and assumed to be citizens of those countries.

The record contains copies of claimant's correspondence, copies of claimant's accounts receivable ledger, and copies of claimant's export ledger reflecting the sale of goods to various consignees in Cuba and the unpaid balance owing claimant as follows:

<u>CONSIGNEE</u>	<u>AMOUNT</u>
Central San Jose, S.A.	\$2,281.62
Cia Azucarera Central Resulta, S.A.	1,739.88
Comision de Fomento Nacional	38.83
The Francisco Sugar Company	586.08
Industrias Consolidadas De Natanzas, S.A.	278.23
Industria De Papel Carton	4.40
Industria Textil Nemaseda, S.A.	84.25
New Tuniucu Sugar Company	2,046.64
Tecnica Cubana, S.A.	7,863.45
Eng Francisco Pacho Pardo	1,280.68

On November 24, 1960 claimant was informed by his agent in Cuba that Cia Azucarera Central Resulta, S.A., The Francisco Sugar Company, Industria Consolidadas De Natanzas, S.A., and New Tunlucu Sugar Co., Inc., the consignees mentioned above, had paid the amounts they owed to claimant's collecting bank in Cuba. On December 13, 1960, claimant was informed that Francisco Pacho Pardo, the consignee mentioned above, had paid the amount it owed to claimant's agent in Cuba. However, claimant states that it has not received the funds owed to it by any of the above-mentioned consignees.

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 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, as to the amounts owed by Central San Jose, S.A., Comision de Fomento Nacional, Industria De Papel Carton, Industria Textil Nemaseda, S.A., and Tecnica Cubana, S.A. totalling \$10,272.55 the loss occurred on September 29, 1959 the day Cuban Law 568 became effective, and on November 25, 1960 as to \$4,650.83 and December 14, 1960 as to \$1,280.68, one day after claimant was notified that these amounts were paid by the consignees.

The Commission has decided that in the 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 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 THE FOXBORO 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 Sixteen Thousand Two Hundred Four Dollars and Six Cents (\$16,204.06) 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

30 NOV 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Decision of the Commission  
Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

This is a true and correct  
copy of the Commission's  
decision on JAN 9 1968

*[Signature]*  
Clerk of the Commission

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).)

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