

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

IN THE MATTER OF THE CLAIM OF

JOHNS-MANVILLE INTERNATIONAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1696

Decision No. CU

1144

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 JOHNS-MANVILLE INTERNATIONAL CORPORATION in the amount of \$110,655.42 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 corporation was organized in the State of Delaware on June 26, 1929; that at all times since that date until presentation of this claim on April 20, 1967, claimant has been wholly-owned by Johns-Manville Corporation; and that over 50% of the outstanding capital stock of Johns-Manville Corporation 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.

A principal officer of Johns-Manville Corporation has certified that approximately 90% of the outstanding capital stock of Johns-Manville Corporation has been and is owned by residents of the United States.

The record includes copies of correspondence from banks, agents of the claimant, consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental officials. Claimant states that it has not received any of the funds for such shipments.

The subject sales were made by claimant during the period March 1958 to November 1960, and the net amounts due claimant from said sales, together with the identity of the Cuban consignees are set forth below:

<u>Consignee</u>	<u>Amount</u>
Accesorios De Omnibus Carlos Mesa, S.A.	\$1,558.22
Accesorios Fren Part, S. A.	1,857.02
Consolidated Railroads of Cuba	434.83
Cooperativa De Omnibus Aliados, S. A.	2,347.67
Ferreteria Lorida, S. A.	38,743.36
Industrias Consolidadas De Matanzas, S. A.	2,299.97
Industrial Hormigon Cubano, S. A.	15,319.02
Carlos Mesa, S. A.	10,587.82
Quality Brand Auto Parts, S. A.	33,203.09
Sigfrido Salomon.	4,314.42

In computing its claim, claimant has reduced each of the above-mentioned accounts in the amount of \$1.00, representing the amounts remaining in suspense on claimant's accounts receivable ledger to insure permanent control of the accounts. However, claimant's "accounting" deductions will be disregarded by the Commission in its determination of the amount of loss sustained arising out of actions by the Government of Cuba.

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 following dates, in each instance (unless otherwise indicated), on the day after acknowledgment of payment by the collecting bank:

<u>AS TO</u>	<u>ON</u>
\$52,760.71	September 29, 1959 (effective date of Law 568)
1,748.40	October 3, 1959 (day after payment due)
150.20	November 20, 1959
1,558.22	December 19, 1959
19.27	December 26, 1959 (day after payment due)
18.72	January 5, 1960 (day after payment due)
2,347.67	January 7, 1960
33.99	January 11, 1960 (day after payment due)
282.90	January 20, 1960 (day after payment due)
4,314.42	January 27, 1960
1,857.02	March 9, 1960
2,502.80	March 11, 1960
4,132.06	March 18, 1960
7,544.57	March 22, 1960
317.69	March 24, 1960
95.45	April 10, 1960 (day after payment due)
4,690.74	April 13, 1960
3,873.31	April 28, 1960
2,505.93	April 29, 1960

AS TO	ON
\$6,881.52	May 6, 1960
1,376.21	May 20, 1960
6,115.04	June 28, 1960
5,534.81	August 16, 1960
3.77	September 26, 1960 (day after payment due)

Thus the Commission finds that claimant sustained a total loss in the amount of \$110,665.42.

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 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 JOHNS-MANVILLE INTERNATIONAL CORPORATION 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 Hundred Ten Thousand Six Hundred Sixty-Five Dollars and Forty-Two Cents (\$110,665.42) 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

FEB 7 1968

*Edward S. Re*

Edward S. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

Certification

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on MAR 13 1968

*Frank M. ...*  
Member 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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