

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

IN THE MATTER OF THE CLAIM OF

INTERCO INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2101

Decision No. CU- 4440

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 Florsheim Shoe Company, a Division of INTERCO INCORPORATED, in the amount of \$3,979.40 based upon the asserted loss of payment for merchandise shipped to Cuba. As the Florsheim Shoe Company has no legal entity of its own, INTERCO INCORPORATED is substituted as claimant herein.

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. 938 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(c) 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)(B) of the Act defines the term "national of the United States" as 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 claimant corporation has certified that at all pertinent times, more than 50% of the outstanding stock of claimant has been owned by United States nationals and that 99.379% of the common stock and 100% of the Series A and Series B First Preferred Stock was held 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.

This claim is based upon merchandise shipped by The Florsheim Shoe Company to various consignees in Cuba in 1959.

Evidence of record discloses that claimant corporation was organized in Delaware; that its original corporate title was International Shoe Company under which title in 1953 it purchased The Florsheim Shoe Company which is now an operating division of claimant corporation. Accordingly, INTERCO INCORPORATED is the true owner of the claim arising from shipments by The Florsheim Shoe Company.

The record contains a summary of the unpaid and open accounts of The Florsheim Shoe Company as of June 25, 1968 which discloses the shipment dates, invoice numbers, amounts, and the names of the collecting banks. This summary is supported as to consignees and amounts by copies of the notices which were sent by claimant's bank to the Cuban banks for collection.

The following is a list of the consignments by the claimant including

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the dates payments were due:

<u>CONSIGNEE</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
Ansola Y. Anuarbe	November 25, 1959	\$ 422.00
Peleteria Victoria Arara Y Cia.	December 9, 1959	1,667.80
Canoura Suervo Y Cia.	November 29, 1959	2,810.65
DeMocratia Mieres Y Cia.	May 23, 1959	470.35
Radar Peleteria Jose Iglesias	December 6, 1959	797.75
El Lazo de Oro Sucrs Miranda Y Cia.	October 10, 1959	<u>2,810.85</u>
		<u>\$8,979.40</u>

Claimant states that it has not received any of the funds for these shipments to 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 in 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 Claim of the Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$8,979.40 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

September 29, 1959	\$ 470.35
October 10, 1959	2,810.85
November 25, 1959	422.00
November 29, 1959	2,810.65
December 6, 1959	797.75
December 9, 1959	<u>1,667.80</u>
	\$8,979.40

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CERTIFICATION OF LOSS

The Commission certifies that INTERCO INCORPORATED 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 Eight Thousand Nine Hundred Seventy-Nine Dollars and Forty Cents (\$8,979.40) with interest 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

29 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

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