

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

IN THE MATTER OF THE CLAIM OF

J. R. BISHO COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2456

Decision No. CU 554

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 J. R. BISHO COMPANY in the amount of \$860.63, plus interest, and is 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 owner of the claimant business enterprise J. R. BISHO, has certified that the claimant is a solely owned proprietorship owned by him, organized and doing business in the State of California. Evidence of record discloses that J. R. BISHO, born in Honolulu, Territory of Hawaii, has been a national of the United States at all times pertinent to this claim. Accordingly, the Commission finds that the claimant herein is a "national of the United States" within the meaning of the provisions of Section 502(1)(A) of the Act.

The record contains copy of claimant's invoice No. 3202 of April 30, 1959, reflecting the sale to Sr. Angel Couto Garcia, Santiago de Cuba, of goods totalling \$860.63. The record also includes correspondence of banking institutions and agents of the claimant in Cuba disclosing that the aforesaid customer and consignee of the goods in question paid for such merchandise on February 9, 1960, but Cuban Exchange Authorities would not permit reimbursement in dollars or other payment to the J.R. BISHO COMPANY, claimant herein. Claimant states that he has never been reimbursed for the merchandise.

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).

Claimant is making a claim for the entire amount paid by the consignee to the Cuban collecting bank. However, the evidence submitted reflects that claimant authorized The First National City Bank branch in Santiago de Cuba to pay a certain stated percentage of the sum collected from the consignee to claimant's representative in Cuba as his commission. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount collected by the Cuban bank from the consignee, less \$43.03, the amount claimant authorized the collecting bank in Cuba to pay its representative as commission.

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 February 10, 1960, as to \$817.60, the day after payment was made to the collecting Cuban bank.

The Commission has decided that in certification of loss 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 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, including the sum of \$817.60 from February 10, 1960.

CERTIFICATION OF LOSS

The Commission certifies that J. R. BISHO 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 Eight Hundred Seventeen Dollars and Sixty Cents (\$817.60) 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

Edward D. Re
Edward D. Re, chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

NOV 1 1967

CERTIFIED
A copy of the decision was filed as the final decision on

4 DEC 1967

Walter J. Anderson
Member of the Commission

ING in a copy
of the Commission
decision on

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 claim. 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).)