

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

IN THE MATTER OF THE CLAIM OF

WOOSTER OPTICAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2477

Decision No. CU - 739

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 WOOSTER OPTICAL CORPORATION in the amount of \$2,992.97 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 the State of New York in the year of 1947 and that all times between 1948 and presentation of this claim on April 26, 1967, all 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 none of its stockholders were residents or nationals of foreign countries.

The record contains copies of letters from three banks acknowledging to claimant that the following collections were paid by the respective consignees and that the collecting bank was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency:

<u>Consignee</u>	<u>Collecting Bank</u>	<u>Amount</u>	<u>Date Acknowledged</u>
Optica Orizondo	Banco Continental Cubano	\$ 385.36	January 11, 1960
Optica Orizondo	Royal State Bank of New York	272.92	December 11, 1959
Optica Modello	Royal State Bank of New York	233.97	April 12, 1960
Optica el Anteojo	Royal State Bank of New York	56.50	January 22, 1960
Sr. Eduardo F. Betancourt	Royal State Bank of New York	<u>410.20</u>	February 4, 1960
	Total	2,992.97	

Claimant states that it has not received the funds.

The record also contains copies of bank correspondence referring to the following drafts, which drafts were due on the dates listed below, and were not paid:

<u>Consignee</u>	<u>Collecting Bank</u>	<u>Amount</u>	<u>Date Acknowledged</u>
Optica Cuba	Banco De La Construccion	\$ 434.24	December 10, 1959
Optica El Almendares	Banco Gelats	1,199.78	February 8, 1960

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, FGSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FGSC 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 loss occurred

<u>ON</u>	<u>AS TO</u>
December 11, 1959	\$ 272.92
January 9, 1960	1,199.78
January 12, 1960	365.36
January 23, 1960	56.50
February 5, 1960	410.20
April 13, 1960	233.97
December 11, 1959	434.24

the days after the collections were acknowledged by the aforementioned banks except with regard to the items of \$434.24 and \$1,199.78, as to which the dates of loss are the days by which the invoices should have been paid.

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 the 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

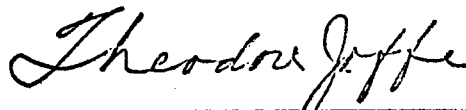
The Commission certifies that WOOSTER OPTICAL CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Nine Hundred Ninety-Two Dollars and Ninety-Seven Cents (\$2,992.97) 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

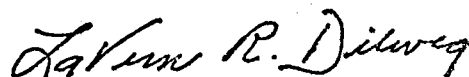
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



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).)

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.