

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

IN THE MATTER OF THE CLAIM OF

HARVEY E. DELAY
and
JAMES M. ARMSTRONG, JR.

Claim No. CU -3122

Decision No. CU

4757

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

Donald R. Gaither, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$79,496.20 was presented by Trinler Corporation based upon the asserted loss of payment for merchandise shipped to a consignee in Cuba. The corporation was liquidated under the laws of the State of Tennessee and the two stockholders are substituted as claimants herein. The claimants have been nationals of the United States since birth.

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)(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.

The record establishes that the Trinler Corporation was organized in the State of Tennessee in 1955 and that at all times until its dissolution on November 7, 1962 all of its capital stock was owned by United States Nationals. Upon the dissolution of the corporation, all of its assets were distributed between the two stockholders in equal shares. The Commission holds that Trinler Corporation was a national of the United States within the meaning of Section 502(1)(B) of the Act and that the two claimants herein are entitled to file this claim for any losses sustained by the Trinler Corporation in Cuba.

The evidence of record includes copies of correspondence between Trinler Corporation and the Bank of America concerning drafts issued for merchandise shipped by Trinler to Armadora Agricola e Industrial S.A., in Cuba; and a letter dated October 6, 1960 from Banco Agricola e Industrial, Havana, Cuba acknowledging payment of drafts in the amount of \$60,000.00, for which permission to reimburse in United States dollars had been sought,

and that drafts totalling \$19,496.20 were still to be collected. According to the record of the amounts not paid to the collecting bank in Cuba, the sum of \$10,000.00 was due on April 1, 1960 and \$9,496.20 was due May 1, 1960.

Claimants state that no part of the total amount of \$79,496.20 had ever been paid to Trinler Corporation or to the claimants.

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 claimants 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 claimants, 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, the Commission finds that the amount of \$79,496.20, representing the unpaid balance due Trinler Corporation was lost as a result of intervention by the Government of Cuba and that the losses occurred on the date notification of payment to the Cuban bank was sent to Trinler Corporation's bank or the due date of

drafts which had not been paid. Thus, in this claim, the Commission finds that the losses to which claimants succeeded occurred as follows:

\$10,000.00 on April 1, 1960
9,496.20 on May 1, 1960, and
60,000.00 on October 6, 1960

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 for each of the claimants as follows:

<u>FROM</u>	<u>ON</u>
April 1, 1960	\$ 5,000.00
May 1, 1960	4,748.10
October 6, 1960	30,000.00


CERTIFICATION OF LOSS

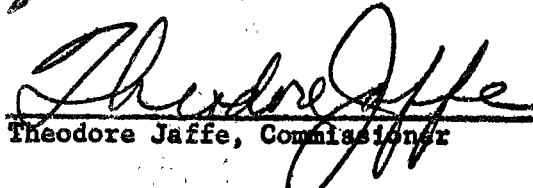
The Commission certifies that HARVEY E. DELAY succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-nine Thousand Seven Hundred Forty-eight Dollars and Ten Cents (\$39,748.10) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JAMES M. ARMSTRONG, JR. succeeded to and 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 Thirty-nine Thousand Seven Hundred Forty-eight Dollars and Ten Cents (\$39,748.10) 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

APR 22 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)