

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

IN THE MATTER OF THE CLAIM OF

JOHNSON BRONZE COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3369

Decision No. CU -4413

AMENDED PROPOSED DECISION

By Proposed Decision issued January 13, 1970, the Commission denied this claim for failure of proof. Since then, satisfactory evidence has been submitted, and the Proposed Decision is hereby amended.

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 the JOHNSON BRONZE COMPANY has certified that Johnson Bronze International, Inc. is its wholly-owned Panamanian subsidiary. Accordingly, it cannot maintain claim and JOHNSON BRONZE COMPANY is substituted as claimant. (See Claim of Avon Products, Inc., Claim No. CU-0772, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35.)

Claimant was organized in Pennsylvania and at all times between dates of loss and presentation of this claim on May 8, 1967, 100% 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.

The record contains copies of invoices reflecting shipment of automotive engine bearings to consignees in Cuba, as follows:

<u>Consignee</u>	<u>Due Date</u>	<u>Amount</u>
Alvaro Fernandez Garcia	November 13, 1960	\$1,538.19
Sireno Garcia	March 22, 1960	1,313.49
Jose R. Hernandez	September 25, 1960	641.48
Imp. del Campo, S.A.	September 23, 1960	1,070.54
Cia. de Autos y Accesorios, S.A.	August 4, 1960	390.56
Candido Gonzalez	November 14, 1960	820.38
Autos Latour, S.A.	November 30, 1960	1,994.74

Claimant states it has not received these funds.

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 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 as follows:

<u>Date</u>	<u>Amount</u>
March 22, 1960	\$1,313.49
August 4, 1960	390.56
September 23, 1960	1,070.54
September 25, 1960	641.48
November 13, 1960	1,538.19
November 14, 1960	820.38
November 30, 1960	<u>1,994.74</u>
	\$7,769.38

The Commission has decided that in certifications 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, from the aforesaid dates.


Accordingly the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

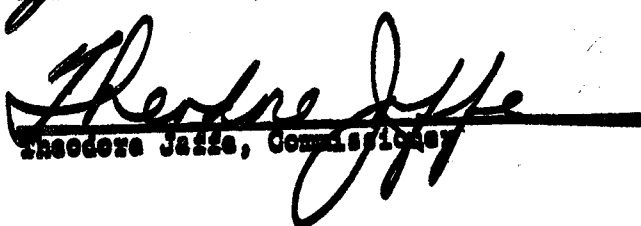
CERTIFICATION OF LOSS

The Commission certifies that JOHNSON BRONZE 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 Seven Thousand Seven Hundred Sixty-nine Dollars and Thirty-eight Cents (\$7,769.38) 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 Amended Proposed Decision of the Commission

SEP 16 1970

  
Luke S. Garlock, Chairman

  
Theodore Jaffe, 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 Amended Proposed Decision, the decision will be entered as the Final Decision of 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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IN THE MATTER OF THE CLAIM OF

JOHNSON BRONZE INTERNATIONAL, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3369

Decision No. CU 4413

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$7,769.38, was presented by JOHNSON BRONZE INTERNATIONAL, INC., and is based upon the asserted loss of payments for goods shipped to consignees in 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant submitted with its claim copies of invoices, but no evidence concerning its possible United States nationality. By Commission letter of January 11, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

On March 15, 1968, claimant was invited to submit any evidence available to it within 45 days from that date, and was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in

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property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

13 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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).)

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