

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

IN THE MATTER OF THE CLAIM OF

THE BASSICK COMPANY, DIVISION
OF STEWART-WARNER CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3383

Decision No. CU

207

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$9,260.68, was presented by THE BASSICK COMPANY, DIVISION OF STEWART-WARNER CORPORATION, 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)]⁷, 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."

Claimant corporation was organized in the State of Virginia on December 20, 1912, and an officer of the claimant corporation has certified that at all times between 1912 and presentation of this claim on May 10, 1967, more than 50% 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 99.1% of its stockholders were nationals of the United States.

The record contains copy of claimant's invoices, EX1554-601-1/11 and EX1570-607-1/5, reflecting the sale to Ferreteria Feito y Cabezon, S.A. of Havana, Cuba, on November 27, 1959, of goods totalling \$1,564.95, as to which freight, shipping and other attendant fees increased the total to \$1,588.29, and on November 30, 1959, of goods totalling \$4,204.88 and as to which freight, shipping and other fees increased the total to \$4,255.04, payment of these amounts being due in 30 days; and invoice No. EX677-242 of May 11, 1960, reflecting the sale to Muebles De Nino, S.A. of Cuba of goods which with the attendant freight, shipping and other fees totalled \$3,417.35.

Additionally, the record includes a copy of a letter dated June 15, 1960, from the Chase Manhattan Bank of New York City informing claimant that it had received a letter dated May 24, 1960, from the Trust Company of Cuba stating that payment of the indebtedness of \$3,417.35 had been made in local currency by Muebles De Nino, S.A., and the collecting bank

was awaiting authorization to effect dollar reimbursement of the collected funds.

There is no evidence of payment to a collecting bank of the amounts due from Ferreteria Feito y Cabezon, S.A. Claimant states that it has received none of the above-mentioned 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 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.)

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 the due date of December 27, 1959, as to \$1,588.29, on the due date of December 30, 1959, as to \$4,255.04, and on May 25, 1960, as to \$3,417.35, the day after the collection was acknowledged by the Trust Company of Cuba.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement

Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of 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 THE BASSICK COMPANY, DIVISION OF STEWART-WARNER 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 Nine Thousand Two Hundred Sixty Dollars and Sixty-Eight Cents (\$9,260.68) 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

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 20 OCT 1967

Theodore Jaffe

Theodore Jaffe, Commissioner

Lavern R. Dilweg

Clerk of the Commission

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).)