

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

IN THE MATTER OF THE CLAIM OF

THE AMORIEX COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3482

Decision No. CU-1204

Counsel for claimant:

Ben Charles Asher, Esq.

AMENDED PROPOSED DECISION

Under date of February 7, 1968, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, claimant submitted evidence in support of its claim for loss of payment for merchandise shipped to Cuba.

Upon consideration of the new evidence in light of the entire record, the Commission now amends the Proposed Decision.

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 shows that claimant was organized under the laws of New York, and that at all pertinent times all of claimant's outstanding capital stock was owned by Arthur Judson, a national of the United States since August 3, 1954. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes copies of bank letters, drafts, invoices, bills of lading, other related correspondence and claimant's statements. It appears that claimant shipped certain merchandise to Cuban

customers. In some instances the customers paid for their purchases from claimant by deposits in local banks. However, dollar reimbursement to claimant was denied by Cuban officials. Claimant states that it has received neither the funds representing payments made to local banks by the customers nor any payments for the outstanding debts due from the other Cuban customers.

The following information concerning the shipments made to the Cuban customers, supported by the evidence of record, shows the paid and the unpaid accounts; the dates on which payments were made or acknowledged by the banks; and with respect to the unpaid accounts, the dates on which the accounts were due:

Accounts Paid to Banks

| <u>Customer</u> | <u>Date Paid or Acknowledged</u> | <u>Amount</u> |
|---|--------------------------------------|-------------------|
| <u>Distribuidora Optica de Cuba, S.A.</u> | November 11, 1959 | \$ 148.63 |
| | February 23, 1960 | 743.15 |
| | April 5, 1960 | 148.63 |
| | Total | <u>\$1,040.41</u> |
| <u>Optica J. Cortez</u> | March 15, 1960 | <u>\$ 233.88</u> |
| <u>Industria Optica Cubana</u> | December 10, 1959 | \$ 159.82 |
| | January 13, 1960 | 159.82 |
| | February 11, 1960 | 159.82 |
| | March 22, 1960 | 159.82 |
| | April 16, 1960 | 159.82 |
| | April 18, 1960 | 958.92 |
| | Total | <u>\$1,758.02</u> |
| <u>Jose R. Del Moral</u> | November 18, 1959 | \$ 272.00 |
| | November 23, 1959 | 86.90 |
| | April 8, 1960 | 86.90 |
| | April 27, 1960 | 86.90 |
| | Total | <u>\$ 532.70</u> |
| <u>Opti Plastic, S.A.</u> | April 5, 1960 | <u>\$ 272.00</u> |
| <u>Raul L. Yanez & Co.</u> | September 28, 1959 | \$ 149.20 |
| | November 16, 1959 | 74.60 |
| | March 29, 1960 | 256.66 |
| | January 30, 1961 | 59.38 |
| | Total | <u>\$ 539.84</u> |

| <u>Customer</u> | <u>Date Paid or Acknowledged</u> | <u>Amount</u> |
|-------------------------------|--------------------------------------|-------------------|
| <u>Enrique Fernandez Pena</u> | October 2, 1959 | \$ 148.63 |
| | January 29, 1960 | 347.27 |
| | February 5, 1960 | 694.36 |
| | February 11, 1960 | 198.60 |
| | April 8, 1960 | 347.18 |
| | May 26, 1960 | 382.91 |
| | June 7, 1960 | 581.47 |
| | January 30, 1961 | 989.03 |
| | Total | <u>\$3,689.45</u> |
| <u>Eduardo Riveira Jorion</u> | March 15, 1960 | \$ 365.24 |
| | March 16, 1960 | 350.00 |
| | March 29, 1960 | 286.95 |
| | April 19, 1960 | 350.00 |
| | May 12, 1960 | 350.00 |
| | June 7, 1960 | 365.24 |
| | January 30, 1961 | 365.24 |
| | Total | <u>\$2,432.67</u> |

Unpaid Accounts

| <u>Customer</u> | <u>Due Date</u> | <u>Amount</u> |
|--------------------------------|-----------------------------|-------------------|
| <u>Jose R. Del Moral</u> | Prior to September 29, 1959 | <u>\$ 260.70</u> |
| <u>Raul L. Yanez & Co.</u> | Prior to September 29, 1959 | <u>\$1,982.93</u> |
| <u>Enrique Fernandez Pena</u> | Prior to September 29, 1959 | \$1,891.34 |
| | October 28, 1959 | 148.63 |
| | November 28, 1959 | 148.63 |
| | December 28, 1959 | 148.63 |
| | January 28, 1960 | 148.63 |
| | February 28, 1960 | 148.63 |
| | March 19, 1960 | 198.55 |
| | March 28, 1960 | 148.63 |
| | April 19, 1960 | 198.55 |
| | April 28, 1960 | 148.63 |
| | Total | <u>\$3,328.85</u> |
| <u>Eduardo Riveira Jorion</u> | Prior to September 29, 1959 | \$1,491.65 |
| | October 4, 1959 | 350.00 |
| | October 23, 1959 | 182.62 |
| | October 30, 1959 | 252.00 |
| | November 4, 1959 | 350.00 |
| | November 6, 1959 | 210.60 |
| | November 10, 1959 | 243.70 |
| | November 23, 1959 | 182.62 |
| | December 4, 1959 | 350.00 |
| | January 4, 1960 | 350.00 |
| | February 2, 1960 | 349.94 |
| | February 4, 1960 | 350.00 |
| | March 4, 1960 | 350.00 |
| | Total | <u>\$5,013.13</u> |

The Government of Cuba, on September 29, 1959, published 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 customers, 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, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payments were made to or acknowledged by the banks, or on the due dates for the unpaid items. Losses with respect to those accounts which were due prior to September 29, 1959 are found to have occurred on September 29, 1959, the effective date of Law 568.

During the course of processing this claim, certain discrepancies were found between the amounts claimed and the evidence submitted by claimant. The Commission therefore suggested an appropriate explanation, but both counsel and claimant failed to respond. Minor discrepancies were found with respect to the accounts with Distribuidora Optica de Cuba, S.A. and Optica J. Cortez. Major discrepancies were found with respect to the accounts of Raul L. Yanez & Co., Enrique Fernandez Pena and Eduardo Riveira Jorion.

In this connection, it is noted that in a list accompanying claimant's letter of January 8, 1962, claimant set forth the following amounts due

from those five Cuban customers:

| | |
|---------------------------------------|------------|
| Distribuidora Optica de Cuba, S.A. | \$1,018.85 |
| Optica J. Cortez | 222.76 |
| Raul L. Yanez & Co. | 2,287.41 |
| Enrique Fernandez Pena | 7,051.20 |
| Eduardo Riveira Jorion | 7,576.96 |

With respect to Distribuidora Optica de Cuba, S.A., the evidence discloses payments to local banks in the aggregate amount of \$1,040.41, whereas claim is being made for \$1,018.85. In the absence of an explanation from claimant, the Commission finds that the total amount due from that customer was \$1,018.85. The difference of \$21.56 is being deducted from the earliest item, dated November 11, 1959, which is found to be \$127.07.

With respect to Optica J. Cortez, the evidence discloses a payment to a local bank in the amount of \$233.88, whereas claim is being made for \$222.76. In the absence of an explanation from claimant, the Commission finds that the amount due from that customer was \$222.76.

With respect to Raul L. Yanez & Co. (also shown in the record as Optica La Prisma), the evidence discloses payments to local banks in the aggregate amount of \$539.84 and unpaid items aggregating \$1,982.93, or a total of \$2,522.77, whereas claim is being made for \$2,189.71. In the absence of an explanation from claimant, the Commission finds that the amount due from that customer was \$2,189.71. The difference of \$333.06 is being deducted from the unpaid items which are found to aggregate \$1,649.87.

With respect to Enrique Fernandez Pena, the evidence discloses payments to local banks in the aggregate amount of \$3,689.45 and unpaid items aggregating \$3,328.85, or a total of \$7,018.30, whereas claim is being made for \$4,394.03. In the absence of an explanation from claimant, the Commission finds that the amount due from that customer was \$4,394.03. The difference of \$2,624.27 is being deducted from the earliest unpaid items. Therefore, in lieu of the first six items thereof the Commission finds that as of February 28, 1960 the net amount due was \$10.22.

With respect to Eduardo Riveira Jorion, the evidence discloses payments to local banks in the aggregate amount of \$2,432.67 and unpaid items aggregating \$5,013.13, or a total of \$7,445.80, whereas claim is being made for \$5,610.15. In the absence of an explanation from claimant, the Commission finds that the amount due from that customer was \$5,610.15. The difference of \$1,835.65 is being deducted from the earliest unpaid items therefore, in lieu of the first two items thereof the Commission finds that as of October 4, 1959 the net amount due was \$6.00.

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 as follows:

| <u>FROM</u> | <u>ON</u> |
|--------------------|-------------|
| September 29, 1959 | \$ 2,059.77 |
| October 3, 1959 | 148.63 |
| October 4, 1959 | 6.00 |
| October 23, 1959 | 182.62 |
| October 30, 1959 | 252.00 |
| November 4, 1959 | 350.00 |
| November 6, 1959 | 210.60 |
| November 10, 1959 | 243.70 |
| November 11, 1959 | 127.07 |
| November 17, 1959 | 74.60 |
| November 19, 1959 | 272.00 |
| November 23, 1959 | 182.62 |
| November 24, 1959 | 86.90 |
| December 4, 1959 | 350.00 |
| December 11, 1959 | 159.82 |
| January 4, 1960 | 350.00 |

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| | |
|-------------------|--------------------|
| January 14, 1960 | \$ 159.82 |
| January 30, 1960 | 347.27 |
| February 2, 1960 | 349.94 |
| February 4, 1960 | 350.00 |
| February 6, 1960 | 694.36 |
| February 12, 1960 | 358.42 |
| February 24, 1960 | 743.15 |
| February 28, 1960 | 10.22 |
| March 4, 1960 | 350.00 |
| March 16, 1960 | 588.00 |
| March 17, 1960 | 350.00 |
| March 19, 1960 | 198.55 |
| March 23, 1960 | 159.82 |
| March 28, 1960 | 148.63 |
| March 30, 1960 | 543.61 |
| April 6, 1960 | 420.63 |
| April 9, 1960 | 434.08 |
| April 17, 1960 | 159.82 |
| April 19, 1960 | 1,157.47 |
| April 20, 1960 | 350.00 |
| April 28, 1960 | 235.53 |
| May 13, 1960 | 350.00 |
| May 27, 1960 | 382.91 |
| June 8, 1960 | 946.71 |
| January 31, 1961 | <u>1,413.65</u> |
| Total | <u>\$16,258.92</u> |

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


CU-3482

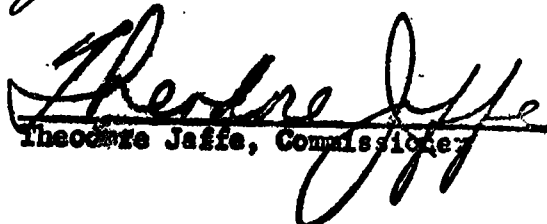
CERTIFICATION OF LOSS

The Commission certifies that THE AMORIEX COMPANY, INC. 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 Sixteen Thousand Two Hundred Fifty-Eight Dollars and Ninety-Two Cents (\$16,258.92) 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

AUG 18 1971


Lyle S. Carlock, 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 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. 31.5(e) and (g), as amended (1970).)

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

IN THE MATTER OF THE CLAIM OF

THE AMORIEX COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3482

Decision No. CU 1204

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 \$16,259.01, was presented by THE AMORIEX COMPANY, INC. 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 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).)

Other than its own statements and copies of certain correspondence with the United States Department of State in 1962, claimant has submitted no evidence to establish the existence of the debts upon which this claim is based.

By Commission letters of August 24, 1967 and October 17, 1967, suggestions were made to claimant as to the type of evidence proper for submission to establish this claim under the Act including but not limited to copies of invoices, bills of lading, bank correspondence and accounts receivable ledgers. Other than a copy of its certificate of incorporation and other submitted evidence referred to above, no evidence in response to this correspondence has been received. On December 14, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it 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.

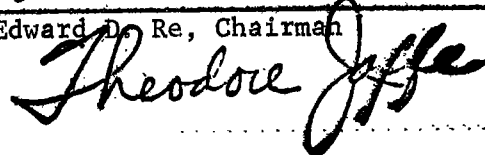
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

FEB 7 1968



Edward D. Re, Chairman



Theodore Jaffe, 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).)

CU-3482