

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

IN THE MATTER OF THE CLAIM OF

THE CLEVELAND TWIST DRILL CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3610

Decision No. CU 265

Counsel for claimant:

Thompson, Hine & Flory
By Thomas A. Mason, Esq.

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 THE CLEVELAND TWIST DRILL CO. in the amount of \$3,689.52 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."

The Treasurer of the claimant corporation has certified that the claimant was organized in 1904 under the laws of the State of Ohio and that at all times between July 17, 1959 and presentation of this claim on May 31, 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 all of its 493,000 stockholders were residents of the United States and assumes that substantially all of them were United States nationals.

The record contains a letter dated December 15, 1960 from Joaquin Rodriguez Garcia, claimant's agent in Cuba, wherein he states applications to reimburse claimant for monies received from the following designated consignees have been made by the respective Havana banks to the National Bank of Cuba:

F. Garcia de los Rios	\$ 131.28
"	483.69
M. Ramos y Cia	309.04
"	813.51
Ferret Alba, S.A.	381.74
"	503.34
A. Solares y Cia	1,066.92

The accounts represent sales in the aggregate amount of \$3,689.52.

Additionally, the record contains letters from The First National Bank of Boston, dated March 10, 1960, December 17, 1959 and April 14, 1960, wherein it advised that its Cuban branch bank collected \$309.04, \$131.28 and \$813.51, respectively, from certain consignees and that it was presently awaiting a dollar reimbursement release from the Monetary Stabilization Fund. The record also contains a letter dated April 8, 1960 from The Trust Company of Cuba, advising that collection in the amount of \$503.34 was paid on March 23, 1960, by Ferreteria Tuma, S.A.; a letter dated January 6, 1960 from The Bank of Nova Scotia, advising that its branch bank made collection in the amount of \$381.74 from Ferreteria Alba, S.A.; and a letter dated February 12, 1960, advising that its branch bank made collection on December 29, 1959 in the amount of \$1,066.92 from A. Solares y Cia. Additionally, The Union Commerce Bank of Ohio, in a letter of May 25, 1967, affirms that a First National Bank of Boston letter of January 27, 1960 advised of payment of the items of \$483.69. Claimant states that it has not received any of the subject monies.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 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.)

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 :

March 24, 1960 as to \$503.34 and

December 30, 1959 as to \$1,066.92, one day after payment was made;

March 11, 1960 as to \$309.03,

December 18, 1959 as to \$131.28,

April 15, 1960 as to \$813.51,

January 7, 1960 as to \$381.74,

January 28, 1960 as to \$483.69, one day after acknowledgement of payment.

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 American Cast Iron Pipe Company, FCSC Claim No. CU-0349).

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 provisions are made for the settlement thereof.

CU-3610

CERTIFICATION OF LOSS

The Commission certifies that THE CLEVELAND TWIST DRILL CO., 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 Three Thousand Six Hundred Eighty-Nine Dollars and Fifty-Two Cents (\$3,689.52) 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 6 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

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).)

~~CONFIDENTIAL~~

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 6 OCT 1967

Francis Thompson
Clerk of the Commission

CU-3610