

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ARMSTRONG CORK COMPANY
Lancaster
Pennsylvania

Claim No. IT-10,000

Decision No. IT-118

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72128-1

Counsel for Claimant:

JESSE R. SMITH, Esquire
Suite 203 Heurich Building
1627 K Street, N. W.
Washington, D. C.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on February 21, 1957, a certified copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Proposed Decision having been given by posting for thirty days,

On the motion of the Commission further examination and study was accorded that portion of the claim relating to freight and cost of insurance coverage. The Commission found that the claimant had sustained additional losses which included freight charges in the amount of \$282.18 and insurance (marine and fire coverage) in the amount of \$874.03, totaling \$1,156.21, and interest thereon in the amount of \$472.45, being 6% per annum from June 28, 1941 to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947; and it is

ORDERED that an award be made and certified to the Secretary of the Treasury for cost, insurance and freight in the principal amount of \$14,705.31 with interest in the amount of \$6,013.71 thereon, making a total award of \$20,719.02.

Washington 25, D. C.

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Henry S. Day
COMMISSIONERS

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FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
Washington 25, D. C.

In the Matter of the Claim of :

ARMSTRONG GORK COMPANY :
Lancaster, Pennsylvania :

Claim No. IT-10,000

Decision No. *It-118*

Under Section 304 of the International :
Claims Settlement Act of 1949, as amended :

Counsel for claimant:

JESSE R. SMITH, Esquire
Suite 203 Heurich Building
1627 K. Street, N.W.
Washington, D. C.

PROPOSED DECISION

This claim in the amount of \$22,658.27 is presented by the Armstrong Cork Company, an American corporation qualifying as a national of the United States, for the loss of cargo on the high seas, under section 304 of the International Claims Settlement Act of 1949, as amended.

The record discloses that early in June, 1940, claimant acquired title to 2,395 bales of cork at a cost of 594,805.35 French francs, and placed the cork at Algeria aboard an Italian vessel bound for New York. In compliance with an order from the Government of Italy issued in contemplation of war, the vessel repaired to an Italian port where the cargo was removed and stored without the consent of the claimant, on or about June 10, 1940 when Italy entered World War II.

An Italian embargo prohibited the transportation of cork from Italy. As a result of this fact and the state of war, the cargo was beyond the control of its owner to which it was never returned. Subsequently, after the accumulation of substantial storage charges to

which the claimant had never consented, the cargo was sold by order of the Italian Government issued on June 28, 1941 and the proceeds were used to satisfy these charges, resulting in a total loss to the claimant.

Section 304 of the Act provides for claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged and with respect to which provision was not made in the treaty of peace with Italy.

The Commission finds that the cork acquired the status of "in transit" to New York when the claimant committed it to the common carrier for transportation;^{1/} and that the placing of the cargo in the warehouse without the consent of the claimant did not deprive the cargo of its "in transit" status.^{2/} Accordingly, it is concluded that the loss occurred on June 28, 1941 when the claimant's property was seized and removed from this status, and ordered to be sold; and that the series of events leading up to the seizure and sale arose out of the war in which Italy was engaged. While the treaty of peace with Italy covers claims for property losses sustained in Italy, it does not apply to losses of property in transit from one foreign port to another. In general, the treaty provides for property damaged or destroyed in Italy in the course of military operations during World War II, and for seizures and the taking of property in Italy in conjunction with such military operations. It is, therefore, concluded

1/ Coe v. Errol, 116 U.S. 517, 6 S. Ct. 475, 29 L. Ed. 715 (1886); Champlain Realty Co. v. Brattleboro, 260 U.S. 366, 43 S. Ct. 146, 67 L. Ed. 309 (1922)

2/ Ill. Central R.C. v. DeFuentes, 236 U.S. 157, 35 S. Ct. 275, 59 L. Ed. 517 (1915); Baltimore & O.S.W.R. Co. v. Seattle, 260 U.S. 166, 43 S. Ct. 28, 67 L. Ed. 189 (1922).

that claimant's loss was not provided for in the treaty of peace with Italy; and that claimant is entitled to an award under section 304 of the Act.

(C. I. F.)
It is the opinion of the Commission that no award may be made with respect to insurance or freight charges paid by the claimant in connection with the transportation of the cork. Such losses did not arise out of the war in which Italy was engaged and could not, therefore, constitute the basis for any claim against the Government of Italy.

The Commission finds that the fair and reasonable value of the cork was 594,805.35 French francs. This amount converted into dollars at the rate of 43.90 francs per dollar, the established rate of exchange in effect at the time of loss which is adopted by the Commission, equals \$13,549.10.

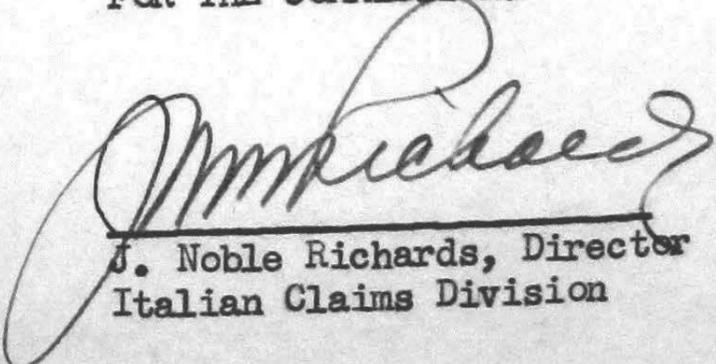
AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby granted to the Armstrong Cork Company in the amount of \$13,549.10 with interest thereon at the rate of 6% per annum from June 28, 1941 to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D. C.

FEB 21 1957

FOR THE COMMISSION:


J. Noble Richards, Director
Italian Claims Division

