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

IN THE MATTER OF THE CLAIM OF

THE CONTINENTAL INSURANCE COMPANY
80 Maiden Lane
New York, New York

Claim No. IT-10,278

Decision No. IT-455

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Attorney for Claimant:

J. EDWIN CAREY, Esquire
Hill, Rivkins, Middleton, Louis & Warburton
96 Fulton Street at William
New York 38, New York

FINAL DECISION

The Commission issued its Amended Proposed Decision on this claim on May 28, 1958, 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 Amended Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Amended Proposed Decision be and the same is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to the Secretary of the Treasury.

Washington 25, D. C.

JUL 9 1958

Whitney Hill

Paul Rice

Henry B. Clay

COMMISSIONERS

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AMENDED PROPOSED DECISION

This is a claim in the amount of \$2,998.00 by The Continental Insurance Company, a domestic corporation duly organized and existing under the laws of the State of New York, which is occasioned by the loss of a shipment of 26 cases and 5 bales of trimmings, shirts, tapestry and textiles valued at \$2,998.00, all of which were the result of seizure by the Italian Government at Massawa, Eritrea, as a consequence of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

The Commission issued its Proposed Decision in this claim on or about January 7, 1958 denying said claim for the reason that the claimant herein failed to submit evidence, although requested, which would establish that the owner of said shipment, at the time of the loss, The R. H. Stevens & Co., was a national of the United States.

The facts as now established by the new evidence of record disclose that the R. H. Stevens & Co. was the owner of a certain portion of the general cargo shipped in August 1939 aboard the "SS Elbe" which was destined from Hamburg, Germany to Manila, Philippines. In

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the course of the "SS Elbe's" voyage the subject items of cargo were ordered to be loaded and transshipped at Port Said to the German-owned motorships "SS Coburg". By coincidence, the "SS Coburg" had other items of general cargo owned by the said R. H. Stevens & Co., Inc., which were likewise destined for Manila, Philippines. More than fifty per cent of the ownership of the stock of the R. H. Stevens & Co., Inc. is owned by American nationals. The claimants portion of the cargo was removed from said vessel without the consent of the owner and placed in a warehouse at the Italian Port of Massawa, Eritrea, whereupon Italy's entry into the war, the said property was seized by Italian authorities.

The claimant in the ordinary course of its marine insurance business issued a policy of insurance, policy #12990, on the amount of \$268.00 dated August 1936; policy #13019, in the amount of \$242.00 dated August 1939; policy #12989, in the amount of \$1,050.00 dated August 1939; policy #13020, in the amount of \$1,438.00 dated August 1939, making a total insured value of the said portion of the shipment in the amount of \$2,998.00. The certificate of insurance also provided that in case of loss the assured would undertake "to sue, labor and travel for" the defense and recovery of the insured property and in such case the insurers would contribute to the cost of such efforts by the assured. Thereafter, as stated, and as a consequence of war, the Italian Government seized the insured property.

It is established that more than fifty (50%) per cent of the outstanding stock of the Continental Insurance Company is owned by American nationals. The said company, by virtue of its payment in the sum of \$2,998.00 to the assured, pursuant to and under the provisions of its said contract of insurance and in accordance with a subrogation agreement between the said assured and the insurer dated June 10, 1948, became the real party in interest as a result of the loss.

By virtue of a familiar principle, recognized and applied alike by courts of law and of equity since time immemorial, an insurer who indemnified the person who has suffered loss through another's wrongdoing, thereby acquires, to the extent of such indemnification, the assured's rights against the wrong-doer; and the insurer thus—by way of subrogation—becoming entitled to the assured's legal remedies, may enforce the same either "at law", by an action in the name of the assured, or "in equity", by suit in the insurer's own name. The Potomac, 105 U.S. 630 * * * U.S. v. So. Carolina State Highway Dept., 171 F(2d)893.

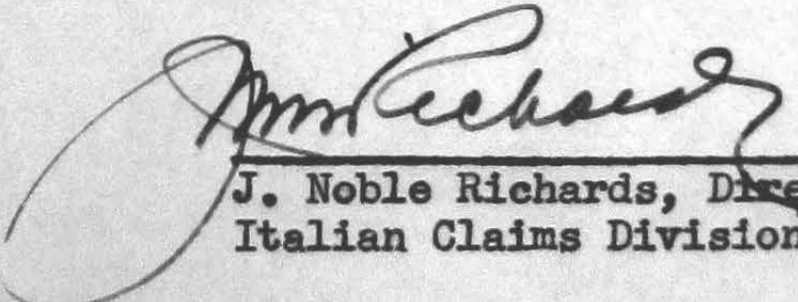
The Commission finds that the claimant is the real party in interest to recover for loss of the property for which claim is made and that the actual loss sustained is in the amount of \$2,998.00, the sum paid by the Continental Insurance Company to the R. H. Stevens & Co., Inc., the assured.

In an award based on a claim filed by a subrogee (Insurance Company) who paid the insured for the loss of the property, interest is computed from the date of such payment to April 23, 1948, the date on which the \$5,000,000 was deposited by the Government of Italy, pursuant to the Memorandum of Understanding (Section 301 (4) of the Act). Since the claimant herein (subrogee) made such payment to the insured subsequent to said date, no interest may be awarded.

AWARD

On the above grounds and evidence, this claim is allowed and an award is hereby made to the Continental Insurance Company in the principal amount of \$2,998.00.

FOR THE COMMISSION:


J. Noble Richards, Director
Italian Claims Division

Dated at Washington, D. C.

MAY 28 1958