

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

IN THE MATTER OF THE CLAIM OF

HEDSTROM UNION COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0012

Decision No. CU **825**

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 HEDSTROM UNION COMPANY in the amount of \$7,702.24, 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 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."

An officer of the claimant corporation has certified that the claimant is a Massachusetts corporation, and that all times between September 28, 1958 and presentation of this claim on June 10, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Additionally, claimant states that 100 percent of its stock is held by United States nationals and that no stock is held by foreign nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) of the Act.

The record contains copies of claimant's invoices reflecting the sale and shipment of goods to Hugo May and Agencias May, S.A. of Havana, Cuba. The invoices are identified by number, date and amount as follows:

<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>
66514-2	September 29, 1958	\$ 412.62
66514-9	September 29, 1958	14.00
69227-2	September 29, 1958	22.60
69227-9	September 29, 1958	.87
77685-1	September 29, 1958	7,321.97
77685-9	September 29, 1958	291.50

78922-1	September 29, 1958	\$1,363.24
78922-9	September 29, 1958	33.24
79730-1	September 29, 1958	919.73
79730-9	September 29, 1958	36.53
80163-1	September 29, 1958	1,358.80
80163-9	September 29, 1958	48.21
18141-1	October 8, 1958	358.32
66163-1	April 15, 1959	7.71
82493-1	September 24, 1959	5.47

The terms of the above invoices are "2% 90, net 60". Claimant has submitted copies of its statement of account with Hugo May and Agencias May, S.A., claimant's agents and representatives in Cuba. This statement lists all of the above invoices and also credits certain payments against the account. A payment was credited on September 24, 1959 and the outstanding balance was stated as \$7,452.36. After the entry of invoice No. 82493-1, the balance due was stated as \$7,457.83.

The final item of this claim, in the amount of \$244.41, is based upon the loss of payment for merchandise shipped to Agencias May, S.A., for the account of one Luis Topp, of Havana, Cuba. There is no indication in the record that the said Luis Topp ever received this merchandise, but the record does establish that the merchandise was delivered to Agencias May, S.A., was billed to that company under debit memo No. 1184, and was due and payable on February 12, 1960.

Claimant states that it has not received any of the funds claimed.

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, 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 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 September 29, 1958, the date of publication of Law 568, as to \$7,452.36; on November 24, 1959, the due date of invoice No. 82493-1, as to \$5.47; and on February 12, 1960, the date of debit memo No. 1184, as to \$244.41

The Commission has decided that in certification of losses 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of 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, as follows:

On \$7,452.36 from September 29, 1959

On \$5.47 from November 24, 1959

On \$244.41 from February 12, 1960


CERTIFICATION OF LOSS


The Commission certifies that HEDSTROM UNION COMPANY 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 Seven thousand Seven Hundred Two Dollars and Twenty-Four Cents (\$7,702.24) with interest hereon 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

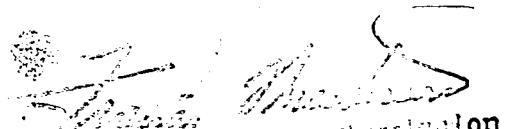
14 DEC 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 1-5-68


Frank M. ...
Clerk of the Commission

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 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).)