

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

IN THE MATTER OF THE CLAIM OF

BOGER & CRAWFORD

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0037

Decision No. CU 4681

Counsel for claimant:

Schumacker and Lunkenheimer
By Lloyd J. Schumacker, 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 BOGER & CRAWFORD in the amended amount of \$208,140.79, based upon the asserted loss of a wholly-owned Cuban subsidiary, Hilazas Boger y Crawford, S.A., and for loss of payment for textile products shipped to consignees in 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)(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.

Statements of officers of claimant corporation and other evidence of record, including birth records of the stockholders, establishes that 100% of the outstanding shares of stock of the claimant corporation, organized in the State of Pennsylvania, were owned at times pertinent to this claim by shareholders who were nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

This claim is based upon the loss of the assets of a wholly-owned subsidiary, Hilazas Boger y Crawford, S.A., which was organized under the laws of Cuba and doing business in that country. Additionally, claim has been asserted for loss of merchandise shipped by claimant to the subsidiary and various other consignees in Cuba.

Net Worth of Subsidiary

The evidence of record includes a State Department file with correspondence and a recapitulation of unpaid shipments made by claimant to Cuban consignees. Additionally, claimant has submitted balance sheets of the Cuban subsidiary dated July 2, 1960, September 3, 1960, and March 31, 1961, ledger records covering transactions with Cuban consignees, affidavits, and 1960-1961 correspondence between claimant, consignees and Cuban residents.

The evidence establishes that the Cuban subsidiary confined its operations to the purchase and sale of cotton yarn, most of the purchases having been made from the parent company, the claimant herein. The assets of the Cuban enterprise consisted of inventories which had been depleted by sales, accounts receivable and bank accounts. It did not own real property but rented a warehouse in Cuba.

Law 568, published in the Cuban Official Gazette on September 29, 1959, discussed more particularly hereafter, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect, this froze or continued the blocking of bank accounts which constituted a major portion of the assets of claimant's subsidiary.

The Claimant asserted that the Cuban subsidiary was taken by the Government of Cuba on July 2, 1960, but submitted no evidence to support this contention. Claimant submitted evidence to establish that the Cuban enterprise was doing business on July 2, 1960, and that various accounts receivable were outstanding and unpaid at that time; and that collection of such accounts receivable of the Cuban subsidiary had been made as late as February 1961.

Law 969, published in the Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the Cuban enterprise, Hilazas Boger y Crawford, S.A., was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The claimant has submitted a recapitulation of all accounts receivable from Cuban consignees, dated March 31, 1961, further discussed below, and a balance sheet dated March 31, 1961, prepared by claimant's employees for the Cuban subsidiary purporting to show the last known assets and liabilities of that business enterprise at or about the time it ceased doing business in Cuba. The basis of the March 31, 1961 balance sheet is an audit report of Cabrera y Salcines, Havana, Cuba, as of September 3, 1960, company records and correspondence concerning cash on hand, collection of accounts receivable and liabilities of the Cuban subsidiary. It reflects the following:

ASSETS

Current Assets

Cash	\$ 129.66	
Cash Special	5.08	
Cash	86,554.56	
Petty Cash	75.00	
Accounts Receivable	<u>18,534.47</u>	\$105,298.77

Investments

1,000.00

Total Assets

\$106,298.77

LIABILITIES AND CAPITAL

Current Liabilities

Inter Co. Account	\$91,145.05	
Advances Inter Co.	<u>8,235.41</u>	\$ 99,380.46

Capital

Authorized Capital Stock	\$100,000.00	
<u>Less: Capital Stock</u>		
Unissued	<u>95,000.00</u>	5,000.00
<u>Plus: Surplus</u>	<u>1,918.31</u>	<u>6,918.31</u>

Total Liabilities

\$106,298.77

The Commission finds that the above balance sheet, the last one prepared by claimant, reflects the financial condition of the Cuban subsidiary at or about the time such firm ceased to actively operate in Cuba and appropriately reflects the financial condition of the firm prior to December 6, 1961, the date of loss. Since this is a Cuban enterprise, it is necessary

to establish the net worth of this subsidiary and it is the finding of the Commission that such firm had a net worth of \$6,918.31 on December 6, 1961, the date of loss.

As indicated in the balance sheet, there were intercompany debts of the Cuban subsidiary due and payable to the claimant, consisting of an account in the amount of \$91,145.05 and an advance made by the parent corporation in the amount of \$8,235.41, a total of \$99,380.46. Accordingly, the Commission finds that the claimant herein also suffered a loss in this total amount within the scope of Title V of the Act as a result of the taking of the Cuban corporation by the Government of Cuba. (See Claim of Kramer, Marx, Greenlee & Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Accounts Receivable

Thus, the Commission finds that when the subsidiary was taken by the Government of Cuba, the claimant herein suffered a loss in the amount of \$106,298.77, within the scope of Title V of the Act, for this portion of the claim.

On March 31, 1961, the claimant prepared a recapitulation for the State Department of a "Schedule of Accounts Receivable Under Drafts Drawn Against Cuban Customers", in the total amount of \$194,339.24. This sum represented the total unpaid accounts of Cuban firms which were due and payable to claimant for merchandise shipped by claimant; and such total also included the sum of \$91,145.05, due and payable by the claimant's subsidiary, Hilazas Boger y Crawford, S.A. to claimant, as discussed above.

While the total amount due and payable by Cuban firms, other than claimant's subsidiary, would appear to be in the amount of \$103,194.19, claimant submitted ledgers of accounts with each Cuban firm and other evidence which established that the unpaid balances were actually in the total amount of \$101,842.02, as follows:

<u>Consignee</u>	<u>Balance Due</u>
Srs. Alcoy Textil	\$ 5,329.40
Azze Hosiery Mills	3,665.97
Cerra Central Textile	4,914.99
Cia. Textilera Sylvania	6,924.44
Salvador Gaztelu	925.93
Srs. Redes Textile Company	1,675.79
Ribbon Fabric Company of Cuba	56,833.82
Sras. Suarez Rodriguez y Cia.	8,172.83
Tejidos y Confecciones Perro	7,945.83
Textilera Duplex	2,012.03
Textilera Esses	1,686.14
Textilera Flamingo	<u>1,754.85</u>
Total	\$101,842.02

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, 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.)

The Commission finds that the claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the

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Government of Cuba. The evidence of record establishes that the shipments were made by invoices on open accounts or by drafts, some of which were paid in part to local Cuban banks, although the amount of local payments has not been established by the evidence of record. These accounts arose from shipments made by claimant between March, 1959, and November, 1960, payment for which would ordinarily be due and payable sixty days after shipment. Claimant has submitted no evidence to establish the exact dates that each account was payable except that an account in the amount of \$56,833.82 was incurred by a Cuban consignee, Ribbon Fabric Company of Cuba, in March, 1959, and the last shipment was made in November 1960. Claimant states that it has not received payment for these outstanding balances.

Thus, in this particular claim, with respect to the loss arising prior to the effective date of Law 568, including the said account payable by the Ribbon Fabric Company of Cuba in the amount of \$56,833.82, the Commission finds that such loss actually arose on September 29, 1959, the date of publication of Law 568. The Commission also finds that with respect to shipments in the total amount of \$45,008.20, made subsequent to September 29, 1959, all accounts were due and payable on January 7, 1961, or sixty days after the date of the last shipment, which was made by the claimant corporation on November 8, 1960, to the Azze Hosiery Mills.

In conclusion, the Commission finds that the claimant herein suffered a loss in the total amount of \$208,140.79, within the meaning of Title V of the Act, as a result of the nationalization or other taking by the Government of Cuba of the properties, subject of this claim and as described above, on the respective dates of taking.

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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

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<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 56,833.82
January 7, 1961	45,008.20
December 6, 1961	<u>106,298.77</u>
Total	\$208,140.79

CERTIFICATION OF LOSS

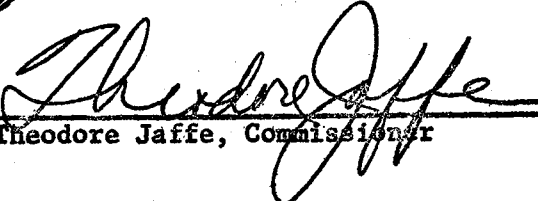
The Commission certifies that BOGER & CRAWFORD suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Eight Thousand One Hundred Forty Dollars and Seventy-nine Cents (\$208,140.79) 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 Proposed
Decision of the Commission

1 APR 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



Sidney Freidberg, 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 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).)

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