

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

IN THE MATTER OF THE CLAIM OF

ETNA POZZOLANA CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0049

Decision No. CU

124

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$54,717.03, was presented by the ETNA POZZOLANA CORPORATION, based upon the asserted ownership and loss of four promissory notes, assertedly due from Concretera Nacional S.A. of Havana, 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under Section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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 was organized in the State of New York in the year of 1944 and that at all times between 1944 and the presentation of this claim on June 16, 1965, 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 and on the basis of a submitted birth certificate, passport issued by the Government of the United States, and Certificate of Naturalization, the Commission finds that all of claimant's stockholders were nationals of the United States during the period from 1958 to June 16, 1965, the date when this claim was filed with the Commission.

The ETNA POZZOLANA CORPORATION sold a dispersing agent to the Concretera Nacional S.A. in Cuba for use in manufacturing concrete during the years of 1958-1959. The record contains a copy of a letter dated May 12, 1960 from Concretera Nacional S.A. acknowledging a debt in the amount of \$54,717.05 to claimant ETNA POZZOLANA CORPORATION. Such debt was represented by four notes, maturing on

November 20, 1958, March 10, 1959, August 18, 1959, and February 3, 1960, in the amounts of \$13,678.30, \$13,678.30, \$13,678.30, and \$13,682.13, respectively, amounting to a total of \$54,717.03. In spite of the acknowledgement, the debt remained unpaid by the debtor Concretera Nacional S.A.

On September 29, 1959, there was published in the Cuban Official Gazette, Cuban Law No. 568, which is drafted in the most general terms. This law, in its preamble, refers to Law 13 of December 23, 1948 which organized the Currency Stabilization Fund, granting it the license to regulate the international exchange. Law 568 proceeds to describe wrongful acts in the field of international exchange which adversely affected the national economy. Specifically, Law 568 then enumerated instances declared to be monetary offenses (Article 1), and provided punishment for the instigator (Article 2).

Paragraph (6) of Article 1 designates as an offense, inter alia, the transferring of funds abroad, by any means, whatever might be the origin of the funds, except in authorized cases, or those which the Currency Stabilization Fund might authorize, through the channels of an associated bank or entity authorized by the National Bank of Cuba. Paragraph (9) of Article 1 prohibited making payments in national money in favor of foreign residents, making payments in bank accounts whose officially named account holders reside abroad, without permission of the Currency Stabilization Fund.

From the foregoing it is clear that not only the transfer of funds to a creditor abroad but also payment to such creditor within Cuba required the permission of the Cuban foreign exchange authority.

The Commission has ascertained, through examination of a number of claims against the Government of Cuba, presented to it, that applications made to the foreign exchange authority of Cuba to transfer funds to the United States were fruitless. Moreover, the Cuban law on foreign exchange control discouraged payment of the amount due even within Cuba in domestic currency.

The demands by the Cuban Government on the debtor in implementation of Law 568 included, among other things, information and evidence as to the Cuban agent's commission; independent audit of the debtor's accounts as well as an audit of the auditor's accounts; explanation of deductions; explanation of length of time in passage; complete list of the debtor's accounts payable. In some instances compliance with these demands would cost the debtor more than the amount to be transferred to the creditor, with the result that the debtor was deterred from complying with the demands of the Cuban Government.

Although the Commission recognizes the sovereign authority of a nation to control its national economy and to this end regulate foreign exchange, nevertheless it also recognizes that the law must have that genuine intention and it must not contravene international law. The Commission has held in other programs that a prohibition against transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardship to non-residents having funds within the country, does not give rise to an international claim. (See the Claim of George Evanoff, Claim No. BUL-1005, 10 FCSC Semiann. Rep. [Jan.-June 1959] 17; and the Claim of Ilie Muresan, Claim No. RUM-30,211, supra, at 111.)

It is not sufficient that the regulation of foreign exchange be the ostensible purpose when in reality the law has been enacted or is utilized for a purpose not in accord with international law. In this connection B.A. Wortley states "It has been rightly suggested that 'a State incurs no liability for depreciating its currency or restricting its transfer abroad', but that 'unduly oppressive measures' might be in a different category. In Re Claim by Helbert Wagg & Co., Ltd., ([1956] I All E.R. 129; [1956] 2 W.L.R. 183) it became quite clear that foreign exchange control may be spoliatory in its effects and held to be illegal and unenforceable abroad." (See Wortley, Expropriation in Public International Law, Cambridge, 1959, p. 107.) Wortley's note 2 (above) concerns a discussion of devaluation (E. Lauterpacht, I. & C.L.Q., vol. V (1956),

p. 427). However, Lauterpacht has referred to a passage in the opinion in the Wagg case, "This court is entitled to be satisfied that the foreign law is a genuine foreign exchange law, that is, a law passed with the genuine intention of protecting its economy in times of national stress and for that purpose regulating (inter alia) the rights of foreign creditors, and is not a law passed ostensibly with that object, but in reality with some object not in accordance with the usage of nations. The title and expressed purpose of such legislation are not conclusive upon the point." (Note by Lauterpacht, supra, p. 306.)

After having considered this matter, 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 its sovereign authority to regulate its foreign exchange. Rather, the Commission concludes that the application of this law insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba into the contractual rights which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act.

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959 the date when Cuban Law No. 568 was published, as to \$13,678.30, \$13,678.30, and \$13,678.30; and on February 4, 1960, the day after the note matured, as to \$13,682.13.

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% from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

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 the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that the ETNA POZZOLANA CORPORATION 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 Fifty-Four Thousand Seven Hundred Seventeen Dollars and Three Cents (\$54,717.03), 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

**23 AUG 1967**

*Edward D. Re*  
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Edward D. Re, Chairman

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*LaVern R. Dilweg*  
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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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CERTIFICATION

**This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on ----- SEP 25 1967 -----**

CU-0049

*Jennie Mackerson*  
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Clerk of the Commission