

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

IN THE MATTER OF THE CLAIM OF

CLAMYER INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0070

Decision No. CU 000044

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$3,830.49, was presented by CLAMYER INTERNATIONAL CORPORATION, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988), the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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."

Claimant corporation was organized in 1950 in the State of New York under the name of Clamyre Productions, Incorporated, and the name was changed in 1951 to CLAMYER INTERNATIONAL CORPORATION. An officer of the corporation has certified that at all times between 1950 and presentation of this claim on June 18, 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 that all of its stockholders were United States nationals.

The record contains information reflecting sales to Cuban enterprises in Havana, Cuba, and drafts drawn on the purchasers in amounts as follows:

Amado Gonzalez Padron	\$ 360.00
La Moderna, S.A.	536.40
Gutierrez, Noriega y Cia.	478.80
F. Vigil y Cia.	655.03
Zarraga & Nosti	801.38
Zarraga & Nosti	998.88
Total	<u>\$3,830.49</u>

Additionally, the record includes a letter of January 13, 1960, from the Bank of Nova Scotia, to claimant, in which it is stated that the collection of \$360.00 was paid by the consignee (Amado Gonzalez Padron), and a letter of February 2, 1960, from the Bank of Nova Scotia, to claimant, in which it is stated that the collection of \$536.40 was paid by the consignee (La Moderna, S.A.), and the Bank of Nova Scotia was awaiting permission to release a dollar reimbursement for each account. Also included in the record is a letter of March 2, 1961, from the Trust Company of Cuba, to claimant, in which it is stated that the collection of \$478.80

was paid by the consignee (Gutierrez, Noriega y Cia.) on December 9, 1959, and that the Trust Company of Cuba was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency; a letter of August 3, 1960, from the First National City Bank of New York, Havana Branch, to claimant, in which it is stated that the collection of \$655.03 was paid by the consignee (F. Vigil y Cia.) on February 29, 1960, and that the First National City Bank of New York was awaiting release from the Exchange Control authorities; a letter of October 5, 1960 from the same bank in which it was stated that the collection of \$801.38 was paid by the consignee (Zarraga & Nosti) on January 18, 1960, and that the bank was awaiting a release from the Exchange Control authorities; and a letter of August 12, 1960 from the First National Bank of Boston stating that the collection of \$998.88 was paid by the consignee (Zarraga & Nosti) and the bank was awaiting similar authorization from the Monetary Stabilization Fund. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 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 In the Matter of the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

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

January 14, 1960 as to \$360.00, on February 3, 1960 as to \$536.40, on December 10, 1959 as to \$478.80, on March 1, 1960 as to \$655.03, on January 19, 1960 as to \$801.38, and on August 13, 1960 as to \$998.88, the days after the collections were paid or acknowledged by the collecting banks.

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% per annum 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 loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

CERTIFICATION OF LOSS

The Commission certifies that CLAMYER INTERNATIONAL 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 Three Thousand Eight Hundred Thirty Dollars and Forty-Nine Cents (\$3,830.49) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

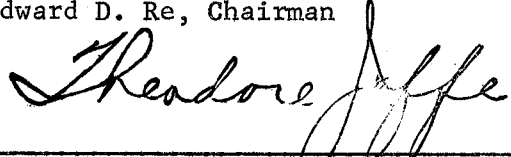
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 14 1967
CERTIFICATION

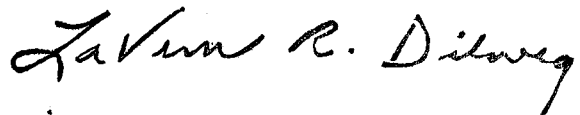
This is a true and correct copy of the decision of the Commission which was entered as the final decision on JUN 14 1967



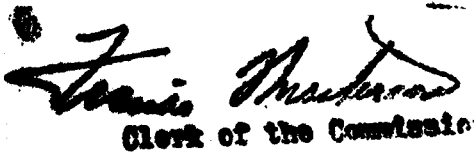
Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner



Clerk of the Commission

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).)