

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

IN THE MATTER OF THE CLAIM OF

H. J. CHAZEN CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0078

Decision No. CU 425

Counsel for claimant:

Daniel K. Saltzer, 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 H. J. CHAZEN CO., INC. in the amount of \$30,494.03 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 was organized in New York and that all times between 1946 and presentation of this claim on June 18, 1965 all of the outstanding capital stock of the claimant has been owned by Herman Jerome Chazen and Julia Riba Bernstein Chazen, United States nationals since nationalization on January 25, 1929 and birth on July 8, 1912 in New York, respectively. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices reflecting the sale of goods to various consignees in Cuba as follows:

<u>Consignee</u>	<u>Amount</u>
Carlos Mesa, S. A.	\$13,599.82
Arcadio Castano	155.00
Guerra y Pinera	342.50
Autos Nunez, S. A.	461.82
Francisco Hernandez "Infanta Motors"	1,394.29
Antonio Perez Munoz "El Block"	2,791.99
Candido Gonzales	1,297.50
Angel Martin	1,731.85
Pedrosa Hno & Cia. S. L.	361.95
Juan B. Herrera	238.00
Cia Riera Toro & Van Twistern, S. A.	866.05
Hnos Marin Sierra	265.80
Amaro Laria Vazquez	426.60
Ferreteria Perez Alvarez	466.35
Salvador Valdes Velez	1,607.03
Neira y Gonzalez	2,137.78
Antonio Garcia & Cia. S. L.	1,035.69
Motor Auto Co. Ltd.	750.71

In all of the above shipments claimant states that it has not received the funds.

CU-0078

Additionally, the record contains letters from Cuban banks stating that certain of the consignees mentioned above made payments as follows:

<u>Consignee</u>	<u>Amount Paid</u>	<u>Collecting Bank</u>	<u>Date Collection Acknowledged by Collection Bank</u>
Carlos Mesa	\$2,096.51	Banco Continental Cubano	December 28, 1959
Carlos Mesa	1,048.25	Banco Continental Cubano	January 6, 1960
Carlos Mesa	643.19	Banco Continental Cubano	January 28, 1960
Carlos Mesa	639.02	Banco Continental Cubano	May 18, 1960
Carlos Mesa	639.02	Banco Continental Cubano	April 28, 1960
Carlos Mesa	639.02	Banco Continental Cubano	May 26, 1960
Carlos Mesa	557.06	Banco Continental Cubano	August 25, 1960
Autos Nunez, S. A.	461.82	Trust Company of Cuba	December 16, 1959
Francisco Hernandez "Infanta Motors"	536.85	Bank of Nova Scotia	December 11, 1959
Antonio Perez Munoz "El Block"	541.66	Trust Company of Cuba	February 23, 1960
Antonio Perez Munoz "El Block"	541.66	Trust Company of Cuba	June 15, 1960
Antonio Perez Munoz "El Block"	599.94	Trust Company of Cuba	August 11, 1960
Antonio Perez Munoz "El Block"	1,108.73	Trust Company of Cuba	July 22, 1960
Candido Gonzalez	503.25	Banco Agricola e Industrial	December 30, 1959
Candido Gonzalez	441.00	Banco Agricola e Industrial	August 5, 1960
Candido Gonzalez	353.25	Banco Agricola e Industrial	February 29, 1960

CU-0078

<u>Consignee</u>	<u>Amount Paid</u>	<u>Collecting Bank</u>	<u>Date Collection Acknowledged by Collection Bank</u>
Angel Martin	\$ 584.47	Banco Continental Cubano	December 3, 1960
Angel Martin	573.69	Banco Continental Cubano	March 31, 1960
Juan B. Herrera	238.00	Banco Agricola e Industrial	February 19, 1960
Cia Riera Toro & Van Twistern, S. A.	493.00	Trust Company of Cuba	April 11, 1960
Cia Riera Toro & Van Twistern, S. A.	373.05	Trust Company of Cuba	March 14, 1960
Hnos Marin Sierra	265.80	Banco Nunez	April 14, 1960
Amaro Laria Vazquez	426.60	Banco Gelats	December 4, 1959
Ferreteria Perez Alvarez	466.35	First National City Bank of New York	July 4, 1960
Salvador Valdes Velez	803.51	First National City Bank of New York	January 25, 1960
Salvador Valdes Velez	803.52	First National City Bank of New York	June 6, 1960
Neira y Gonzalez	1,068.89	Banco Agricola e Mercantil	May 23, 1960
Neira y Gonzalez	1,068.89	Banco Agricola e Mercantil	September 20, 1960
Motor Auto Co. Ltd.	750.71	First National City Bank of New York	March 28, 1960

The above-mentioned collecting banks advised claimant that they were awaiting a dollar reimbursement release from the Currency Stabilization Fund, a Cuban Government agency. 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 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 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 The 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 losses occurred as follows:

<u>On</u>	<u>As To</u>
September 29, 1959	\$ 497.50
September 29, 1959	7,337.75
September 29, 1959	359.56
September 29, 1959	361.95
September 29, 1959	497.88
September 30, 1959	573.69
October 29, 1959	1,035.69
December 4, 1959	584.47
December 5, 1959	426.60
December 12, 1959	536.85
December 17, 1959	461.82
December 29, 1959	2,096.51
December 31, 1959	503.25
January 7, 1960	1,048.25
January 26, 1960	803.51

<u>On</u>	<u>As To</u>
January 29, 1960	\$ 643.19
February 20, 1960	238.00
February 24, 1960	541.66
March 1, 1960	353.25
March 15, 1960	373.05
March 29, 1960	750.71
April 1, 1960	573.69
April 12, 1960	493.00
April 15, 1960	265.80
April 29, 1960	639.02
May 19, 1960	639.02
May 24, 1960	1,068.89
May 27, 1960	639.02
June 7, 1960	803.52
June 16, 1960	541.66
July 5, 1960	466.35
July 23, 1960	1,108.73
August 6, 1960	441.00
August 12, 1960	599.94
August 26, 1960	557.06
September 21, 1960	1,068.89

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 allowed at the rate of 6% per annum from the date of loss to date of settlement (See the Claim of Lisle Corporation, FGSC Claim No. CU-0644).

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 settlement thereof.

A portion of this claim is based on debts owed by Consuelo Enrique Vda de Godoy, claimant's representative in Cuba. However, evidence submitted indicates that the debts owed by claimant's above-mentioned representative were originally owed by the consignees Arcadio Castano and Guerra y Pinera, and the Commission has already taken these losses into account in its findings of claimant's loss discussed above. Accordingly, this portion of the claim is denied.

CERTIFICATION OF LOSS

The Commission certifies that H. J. CHAZEN CO., INC. 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 Twenty-Nine Thousand Nine Hundred Thirty Dollars and Seventy-Three Cents (\$29,930.73) 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

OCT 18 1967

This is a true and correct copy of the decision of the Commission as the final decision on...
NOV 21 1967
Theodore Jaffe
Clerk of the Commission

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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).)