

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

IN THE MATTER OF THE CLAIM OF

THE ARROW HART AND  
HEGEMAN ELECTRIC COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0083

Decision No. CU 000C43

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$4,041.41, was presented by THE ARROW HART AND HEGEMAN ELECTRIC COMPANY, 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".

An officer of the claimant corporation has certified that the claimant was organized in the State of Connecticut and that at all times between December 30, 1959 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 8,266 of its stockholders were residents of the United States and that 12 stockholders were residents of foreign countries.

The record contains copy of claimant's invoice No. 528 of November 24, 1959 reflecting the sale to Importadora Rivera of Havana, Cuba, of goods totalling \$892.69, as to which freight, shipping and other attendant fees increased the total to \$898.14; copy of invoice No. 319 of July 10, 1959 reflecting the sale to Cia. Rogelio Vocero, S.A. of Cuba, of goods totalling \$1,659.41 as to which freight, shipping and other fees increased the total to \$1,664.86; copy of invoice No. 475 of October 23, 1959 reflecting the sale to the Independent Electric Company of Cuba, S.A. of Havana, Cuba, of goods totalling \$867.47, as to which freight, shipping and other attendant

fees increased the total to \$872.92; and copy of invoice No. 393 of September 4, 1959 reflecting the sale to the Independent Electric Company of Cuba, S.A. Havana, Cuba, of goods totalling \$600.04, as to which freight, shipping and other attendant fees increased the total to \$605.49.

Additionally, the record includes a letter of May 6, 1960 from the Royal Bank of Canada to claimant, in which it is stated that the collection of \$898.14 was paid by the consignee (Importadora Rivera) and that the Royal Bank of Canada was still awaiting a dollar reimbursement release from the Exchange Control, a Cuban Government agency; a letter dated December 30, 1959 and a letter dated February 9, 1960 from the Banco Continental Cubano stating that the collections of \$605.49 and \$872.92 were paid by the consignee (Independent Electric Company of Cuba, S.A.) and that the Bank was awaiting similar authorization from the Currency Stabilization Fund; and a letter dated September 28, 1960 from Banco Nunez, to claimant, stating that the collection of \$1,664.86 was paid by the consignee (Cia. Rogelio Vocero, S.A.). 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 May 7, 1960 as to \$898.14, on September 29, 1960 as to \$1,664.86, on December 31, 1959 as to \$605.49, and on February 10, 1960 as to \$872.92, the days after the collections were 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 THE ARROW HART AND HEGEMAN ELECTRIC COMPANY suffered a loss, as a result of actions of the

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Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand Forty-One Dollars and Forty-One Cents (\$4,041.41) 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**

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

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 JUL 14 1967

*Francis Macfarland*  
Clerk of the Commission

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