

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

IN THE MATTER OF THE CLAIM OF

ROSARIO ANTONIELLO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0088

Decision No. CU 2345

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 ROSARIO ANTONIELLO, d.b.a. Rue Forwarding Company in the amount of \$2,063.69 based upon the asserted loss of payment for ocean freight, forwarding charges and shipping charges assertedly due from claimants 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.

Claimant has been a national of the United States at all times pertinent to this claim, and has been authorized by the State of New York to conduct business under the name of Rue Forwarding Company.

Claimant states that his loss was incurred as a result of forwarding freight to people in Cuba, the charges including forwarding fees, freight and other charges in connection with such forwarding; that these clients were billed for his outlays and services; that he believes that the drafts were paid in Cuban currency, but that funds were never remitted to him.

It has been noted that a number of the invoices have been over stamped to reflect that Rue Forwarding Company is a Division of Savoy Shipping Company. Claimant has stated that Savoy Shipping Company was owned by Candido Gonzalez and rented space in claimant's office. However claimant, by letter of December 26, 1967, eliminated from his claim amounts assertedly due him from Candido Gonzales, as owner of Savoy Shipping Co., amounting to \$341.57, thus reducing his claim to \$1,722.12.

The record contains claimant's invoices to Cuban consignees on shipments as follows:

	<u>Date</u>	<u>Claimant's Invoice</u>
Borg-Warner International Corporation to Motor & Supply Corporation	April 13, 1959	\$ 98.09
C. Howard Hunt Pen Co. to Impresora Modelo, S.A.	September 28, 1959	41.46
Oakville Company to Impresora Modelo, S.A.	August 25, 1959	105.39
The Accurate Parts, Inc. to Accesorios Valles, S.A.	March 18, 1960	52.90
Utility Products Co. to Osvaldo Diaz (El Triangulo)	April 1, 1960	420.51
Badean International to Intercambio Comercial de la Habana, S. A.	September 28, 1959	
Value of goods paid by claimant	\$352.10	
Shipping and other expenses	<u>40.67</u>	392.77
This \$392.77 was paid to Trust Co. of Cuba on June 24, 1960		
H.J. Chazen Co., Inc. To Angel Martin	October 20, 1959	65.96
Amko Trading Corporation to Fernandez Linares y Cia. This amount, with that due the consignor, was paid to a Cuban Bank on July 13, 1960, as acknowledged by Amko Trading Corporation	October 29, 1959	62.61
Guiterman Co., Inc. to Juan Garcia	November 9, 1959	70.80
Amko Trading Corporation to Felipe Valls Bravo	November 9, 1959	132.03
Mirro Aluminum Co. to Cia. de Accesorios de Refrigeracion, S.A.	November 9, 1959	113.71
I.J. Chazen Inc. to Neira y Gonxalez	November 9, 1959	126.17
American Potash & Chemical Corp. to Cia. de Accesorios de Refrigeracion, S. A.	December 11, 1959	<u>39.72</u> \$1,722.12

Claimant states that he has not received the funds.

Certain of the consignors listed above have filed claim with this Commission, as follows:

Borg-Warner International Corporation	CU-0171
H. J. Chazen Co.	CU-0078
Amko Trading Corporation	CU-1436, 1437, 1438 and 1920
Guiterman Co., Inc.	CU-0701

Inasmuch as in the majority of cases, shippers fees have been included in drafts of consignors of payments made to banks on account of consignors, the above listed claims have been examined. In one instance, Amko Trading Corporation, the item of \$132.03 was included in Claim No. CU-1920 with copy of invoice of Rue Forwarding Company in support, and this amount has been included in the certification of loss in Decision No. CU-226, on the four above listed claims. Accordingly, the Commission holds that claimant has recourse for the item of \$132.03 against Amko Trading Corporation. (See Claim of Pan American Forwarders, Inc., Claim No. CU-0257).

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 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).

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 the following dates, which are the date of Cuban Law 568, 30 days from the invoice date, or the day after payment to the bank:

September 29, 1959	\$ 244.94
April 18, 1960	52.90
May 1, 1960	420.51
June 25, 1960	392.77
November 20, 1959	65.96
July 14, 1960	62.61
December 9, 1959	310.68
January 11, 1960	39.72

\$1,590.09

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).

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.

CU-0088

CERTIFICATION OF LOSS

The Commission certifies that ROSARIO ANTONIELLO 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 One Thousand Five Hundred Ninety Dollars and Nine Cents (\$1,590.09) 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

JUL 31 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)