

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

IN THE MATTER OF THE CLAIM OF

R.M. HOLLINGSHEAD CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0102

Decision No. CU

00055

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$6,180.07, was presented by R.M. HOLLINGSHEAD 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."

An officer of the claimant corporation has certified that the claimant was organized in New Jersey and that at all times between January 1, 1960 and presentation of this claim on June 22, 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 261,817 shares or 99.17 per cent of the stock in claimant corporation were owned by residents of the United States. Claimant assumes that substantially all of them were United States nationals. Claimant further states that .83 per cent of the stock was owned by residents of foreign countries, who are assumed to be citizens of those countries.

The record contains copies of the following invoices reflecting sales in the indicated amounts to Productos Sanitarios, S.A. of Havana, Cuba: invoice No. X-1507 for goods totalling \$2,215.20, as to which freight, shipping and other attendant fees increased the total to \$2,517.79; invoice No. X-1667 for goods totalling \$1,022.50, as to which freight, shipping and other attendant fees increased the total to \$1,218.72; and invoice No. X-1668 for goods totalling

\$1,286.94, as to which freight, shipping and other attendant fees increased the total to \$1,451.31. The record also contains a copy of claimant corporation's invoice No. X-773 reflecting sales to Ferreteria Trans America, S.A. of Havana, Cuba of goods totalling \$887.16, as to which freight, shipping and other attendant fees increased the total to \$992.25.

Additionally, the record includes letters from The Philadelphia National Bank dated June 29, 1966, to claimant corporation, in which it is stated that the collection of \$2,517.79 was paid by Productos Sanitarios, S.A. on November 4, 1960; that the collections of \$1,218.72 and \$1,451.31 were paid by said consignee on February 14, 1961; and that payment has not been received from the bank's Cuban correspondent. Furthermore, the record includes a letter from the First Pennsylvania Banking and Trust Company, dated July 7, 1966, to claimant corporation, stating that its Cuban correspondent bank, Banco de la Construccion, had on January 12, 1961, acknowledged receipt of the collection of \$992.25 from the consignee, Ferreteria Trans America, S.A., and that the Cuban correspondent bank would remit the funds as soon as approval was given by the National Bank of Cuba. 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 November 5, 1960 as to \$2,517.79; and on February 15, 1961 as to \$1,218.72 and \$1,451.31; that said dates are the days after which collection of said sums were paid by Productos Sanitarios, S.A.; and that the loss occurred on November 13, 1961 as to \$992.25, the day after the collection of that sum was acknowledged by Banco de la Construcción.

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:

On \$2,517.79 from November 5, 1960.  
On \$1,218.72 from February 15, 1961.  
On \$1,451.31 from February 15, 1961.  
On \$ 992.25 from January 13, 1961.

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CERTIFICATION OF LOSS

The Commission certifies that R.M. HOLLINGSHEAD 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 total amount of Six Thousand One Hundred Eighty Dollars and Seven Cents (\$6,180.07) 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

W-0102

*Janis Mackren*  
Clerk of the Commission