

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

IN THE MATTER OF THE CLAIM OF

WILLIAM M. WILSON'S SONS, INC.

Claim No. CU-0128

Decision No. CU 70

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Morgan, Lewis and Bockius

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$4,109.00, was presented by WILLIAM M. WILSON'S SONS, INC., 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 Pennsylvania, and that at all times between January 1, 1960 and presentation of this claim on June 25, 1965, all 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.

The record contains copies of the following invoices reflecting sales in the indicated amounts to A. Solares y Cia., S. en C. of Havana, Cuba: invoice No. 22092 for goods totalling \$939.71; invoice No. 22102 for goods totalling \$22.68; and invoice No. 93012 for goods totalling \$818.52.

Additionally, the record includes a letter from A. Solares y. Cia., S. en C. dated July 13, 1960, as well as a letter from The Philadelphia National Bank dated August 12, 1960, advising claimant corporation that the collection of \$962.39 was paid by said consignee on invoice Nos. 22092 and 22102 on July 13, 1960, and that the collection of \$818.52 was paid on invoice No. 93012 by said consignee on July 13, 1960. Furthermore, a letter to claimant corporation from The Trust Company of Cuba, dated February 16, 1960, advises that collection of \$2,275.29 was paid to said bank by Importaciones Petro-Gas, S.A. on February 16, 1960, and that the Cuban bank had applied to the Exchange Control Authorities for permission to reimburse this item. 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 July 14, 1960, as to \$962.39 and \$818.52, said date being the day after which collection of said sums were paid by A. Solares y Cia., S. en C.; and that the loss occurred on February 17, 1960 as to \$2,275.29, the day after the collection of that sum from Importaciones Petro-Gas, S.A. was acknowledged by The Trust Company of Cuba.

It is noted that, with respect to invoice Nos. 22092 and 93012, additional claim has been made for banking and handling charges in the amounts of \$28.27 and \$24.53, respectively. However, the record indicates that no collection was in fact paid by the consignee, A. Solares y Cia., S. en C. for such additional charges. Accordingly, the Commission finds that claimant has not established that it was owed these sums by the said consignee, or that these amounts were lost as a result of any action by the Government of Cuba. Claimant has therefore not established that it sustained any loss in excess of that found herein.

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 \$2,275.29 from February 17, 1960.
- On \$ 962.39 from July 14, 1960.
- On \$ 818.52 from July 14, 1960.

CERTIFICATION OF LOSS

The Commission certifies that WILLIAM M. WILSON'S SONS, 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 total amount of Four Thousand Fifty-Six Dollars and Twenty Cents (\$4,056.20) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

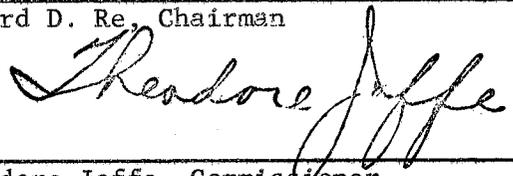
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 28 1967
CERTIFICATION

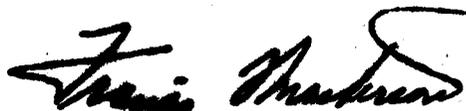
is a true and correct copy of the decision
of the Commission which was entered as the final
decision on JUL 28 1967



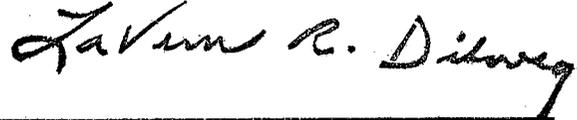
Edward D. Re, Chairman



Theodore Jaffe, Commissioner



Francis Matthews
Clerk of the Commission



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).)