

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

IN THE MATTER OF THE CLAIM OF

HUNTER BENN COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0134

Decision No. CU

555

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 HUNTER BENN COMPANY, INC. in the amount of \$3,005.27 based upon the asserted loss of payment for merchandise shipped to Cuba and the balance owing on the open account of claimant's sales representative.

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,

interventéd, 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 Alabama and that at all times between January 1, 1959 and presentation of this claim on June 28, 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 three of its four stockholders, owning 490 of 500 issued shares, are United States nationals, and that one stockholder, owning the remaining ten shares, is a British subject.

The record contains a copy of claimant's invoice No. 5923 of August 12, 1959 reflecting the sale to Maderas Y Materiales Magama of Havana, Cuba, of goods totalling \$1,722.80, as to which the unpaid balance is \$449.83, a copy of its invoice No. 5911 of August 6, 1959 reflecting the sale to Serafin Gomez Gonzalez of Havana, Cuba, of goods totalling \$620.00, as to which the unpaid balance is \$230.83, and a copy of its invoice No. 5923 of September 23, 1959 reflecting the sale to Perez Hermanos, S. A. of Havana, Cuba, of goods totalling \$2,876.69, as to which the unpaid balance is \$2,097.28.

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Additionally, the record includes a copy of a letter of October 26, 1960 from the Merchant's National Bank of Mobile (Alabama), to claimant, in which it is stated that three drafts in the amounts of those unpaid balances were paid in Cuban pesos awaiting dollar exchange, and that a considerable delay in obtaining dollars was anticipated. 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 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 October 27, 1960 as to \$2,777.94, the day after the collections were acknowledged by the Merchants National Bank of Mobile.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6 (d) Supp. 1967).)

The remainder of this claim, for \$227.33, is based upon an asserted cash advancement by claimant to its sales representative in Havana, Eduardo M. Portillo.

The Commission, in its letters of September 20, 1967 and October 17, 1967, suggested that claimant submit evidence substantiating said advancement, but no such evidence has been received to date.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish that a debt was due from its Cuban sales representative. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

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CERTIFICATION OF LOSS

The Commission certifies that HUNTER BENN COMPANY, 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 of Two Thousand Seven Hundred Seventy-Seven Dollars and Ninety-Four Cents (\$2,777.94) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

NOV 1 1967

Checklist
This is a true and correct copy of the decision of the Commission which is entered as the Final Decision on APC-1007
W. J. Jaffe
Chief 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).)