

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

IN THE MATTER OF THE CLAIM OF

UNIVERSAL BERNAL CORP.

Claim No. CU-0149

Decision No. CU-33

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$3,587.31 was presented by UNIVERSAL BERNAL CORP., 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 New York on April 20, 1959 to continue the business of the former Universal Trade Company and that Paul Wexler, a national of the United States by birth in the United States was the sole owner of Universal Trade Company and is the sole owner of UNIVERSAL BERNAL CORP. The Commission holds that claimant is a national of the United States within the meaning of Section 501(1) (B) of the Act.

The record contains copy of claimant's invoice of January 27, 1959 reflecting the sale to Comercial Nasurco, S.A., of Havana, Cuba, of goods totalling \$405.00; copy of his invoice of September 30, 1959 reflecting the sale to Guerra y Pinera Vibora-Havana, of goods totalling \$1,737.42 and as to which freight, shipping and other fees increased the total to \$1,880.91; and copy of claimant's invoice of October 1, 1959 reflecting the sale to Antonio Garcia y Cia. S. Ltd., of Pinar del Rio, Cuba, of goods totalling \$1,290.00, as to which shipping fees increased the total to \$1,301.40.

Additionally, the record includes letters from The First National City Bank of New York to claimant stating that the collections of \$405.00, \$1,880.91 and \$1,301.40 were paid by the consignees and that the Bank was still awaiting a dollar reimbursement release from the Currency Stabilization Fund, a Cuban Government agency. 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 2, 1960 as to \$405.00; on June 22, 1960 as to \$1,880.91; and on March 3, 1960 as to \$1,301.40, the days after the collections were acknowledged by the Bank.

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:

\$ 405.00 from July 2, 1960
1,880.91 from June 22, 1960
1,301.40 from March 3, 1960

CERTIFICATION OF LOSS

The Commission certifies that UNIVERSAL BERNAL CORP., 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 Three Thousand Five Hundred Eighty-seven Dollars and Thirty-one Cents (\$3,587.31) 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

23 FEB 1967

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON 23 1967

James P. Heaton
Clerk of the Commission

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 20 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) (1964))