

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

IN THE MATTER OF THE CLAIM OF

SOMMER & MACA GLASS MACHINERY COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0160

Decision No. CU **531**

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 SOMMER & MACA GLASS MACHINERY COMPANY in the amount of \$1,742.31, as amended, based upon the loss of payment for merchandise shipped to 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.

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 Illinois and that all times between March 29, 1947 and presentation of this claim on July 1, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that its four stockholders were all nationals of the United States. 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 a copy of claimant's invoice No. 381721 of May 21, 1959, reflecting the sale to Lopez Y Cia. of Havana, Cuba, of goods totalling \$126.87, as to which claimant's agent's commission decreased the total to \$117.35; copies of its invoices numbered 413351 through 413356, all of November 11, 1959, reflecting the sale to Cia. Nacional De Espejos, S.A. of Havana, Cuba, of goods totalling \$423.37, as to which its agent's commission decreased the total to \$391.62; a copy of its invoice No. 410196 of October 23, 1959, reflecting the sale to Cia. Ferretera Los Aliados, S.A. of Havana, Cuba, of goods totalling \$1,105.00, increased to \$1,263.32 by freight, shipping, and other attendant fees, but decreased to \$1,180.44 by its agent's commission; and a copy of its invoice No. 466895 of August 31, 1960 to that same consignee, reflecting additional expenses and a deficiency of amount in a letter of credit for previous shipments, of \$52.90.

Additionally, the record contains a copy of a letter to claimant from The Trust Company of Cuba stating that a draft drawn on Cia. Ferretera Los Aliados, S.A. was paid by June 24, 1960. 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 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 September 29, 1959 as to \$117.35, the date on which Law 568 was published, on December 4, 1959 as to \$391.62, on June 25, 1960 as to \$1,180.44, and on September 30, 1960 as to \$52.90, the dates by which the invoices should have been paid, and as to \$1,180.44, the day following payment of the draft in local currency for that invoice.

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 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 dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SOMMER & MACA GLASS MACHINERY COMPANY 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 Seven Hundred Forty-Two Dollars and Thirty-One Cents (\$1,742.31) 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

OCT 25 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Walter M. ...*  
Clerk of the Commission

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

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A copy of the decision  
was submitted to the Final  
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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).)