

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

IN THE MATTER OF THE CLAIM OF

JOSEPH PLASENCIA, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0167

Decision No. CU-**1530**

PROPOSED DECISION

This claim, as amended, against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOSEPH PLASENCIA, INC. in the amount of \$9,620.83 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [8 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 on April 10, 1947 under the laws of the State of New York, and that all times between September 30, 1959 and presentation of this claim on July 2, 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.

The record reflects that its present sole stockholder is a national of the United States.

The record contains copies of invoices which reflect the following sales in 1959 made by claimant corporation.

| <u>Invoice No.</u> | <u>Consignee</u>                                | <u>Amount</u> |
|--------------------|---|---------------|
| 20784              | The Independent Electric Company of Cuba, S. A. | \$2,134.72    |
| 20781              | The Independent Electric Company of Cuba, S. A. | 3,971.58      |
| 20671-B            | The Independent Electric Company of Cuba, S. A. | 40.64         |
| 20602              | Casa Jimenez                                    | 616.05        |
| 20517              | Guillermo Flores                                | 268.50        |
| 20260              | Ramon Alvarez Martin                            | <u>583.52</u> |
|                    | TOTAL   | \$7,615.01    |

The record also contains copies of several Debit Notices sent to Independent Electric Company of Cuba, S. A., for shipping expenses,

service charges and corrected charges. The following charges were made by claimant:

| <u>Debit Note No.</u> | <u>Date</u>       | <u>Amount</u> |
|-----------------------|-------------------|---------------|
| 394                   | June 1, 1960      | \$ 120.91     |
| 326                   | January 6, 1960   | 6.10          |
| 310                   | December 15, 1959 | 755.20        |
| 308                   | December 9, 1959  | 59.90         |
| 305                   | December 2, 1959  | 723.35        |
| 297                   | November 18, 1959 | 223.73        |
| 292                   | November 13, 1959 | 42.69         |
| 285                   | November 6, 1959  | <u>73.94</u>  |
| TOTAL                 |                   | \$2,005.82    |

The record also contains copies of letters from the Havana branch of the First National City Bank of New York dated January 14, 1960 and February 16, 1960 wherein it advised claimant that collection had been made on \$583.52 (Invoice No. 20260) and \$616.05 (Invoice No. 20602), respectively, and that the bank was presently awaiting a dollar reimbursement release from the official Cuban exchange authorities. Claimant states that it has not received any of the monies upon which this claim is based.

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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, 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.

| <u>On</u>         | <u>As to</u>  |
|-------------------|---|
| November 5, 1959  | \$ 73.94, date payment due  |
| November 12, 1959 | 42.69, date payment due   |
| November 17, 1959 | 223.73, date payment due  |
| November 29, 1959 | 268.50, date draft due  |
| December 1, 1959  | 723.35, date payment due  |
| December 8, 1959  | 59.90, date payment due   |
| December 14, 1959 | 755.20, date payment due  |
| January 5, 1960   | 6.10, date payment due  |
| January 15, 1960  | 583.52, day after acknowledgement of collection by the Cuban bank |
| February 17, 1960 | 616.05, day after acknowledgement of collection by the Cuban bank |
| March 7, 1960     | 2,134.72, date draft due  |
| March 7, 1960     | 3,971.58, date draft due  |
| March 7, 1960     | 40.64, date draft due   |
| May 31, 1960      | <u>120.91</u> , date payment due                                  |
| TOTAL             | \$9,620.83  |

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 Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of 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.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH PLASENCIA, 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 Nine Thousand Six Hundred Twenty-Dollars and Eighty-Three Cents (\$9,620.83) with interest thereon at 6% per annum from the respective

dates of loss to the date of settlement.

**CERTIFICATION**  
This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAY 17 1968

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

*Francis Masterson*

APR 10 1968

*Leonard v. B. Sutton*  
Clerk of the Commission

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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).)